DOCUMENT RESUME

ED 182 078 RC 011 803

AUTHOR Ortiz, Roxanne Dunbar, Ed.
TITLE Economic Development in American Indian Reservations. Development Series No. 1.
INSTITUTION New Mexico Univ., Albuquerque.
PUB DATE 79
NOTE 156p.

EDRS PRICE MF01/PC07 Plus Postage.
DESCRIPTORS American Indian Culture; *American Indians; Colonialism; Depressed Areas (Geographic); *Economic Development; Economic Disadvantagement; *Federal Indian Relationship; Financial Policy; Government Role; *Natural Resources; *Political Issues; Reservations (Indian); Self Determination; Tax Effort; Treaties; Tribal Sovereignty; Tribes; Trust Responsibility (Government); Water Resources
IDENTIFIERS American Indian History; *Navajo Nation

ABSTRACT

A collection of 13 scholarly articles and essays, this book makes available hard-to-find information and theories about American Indian economic development. Part I, "The Land and the People", emphasizes cultural traditions and beliefs of Indian people and traces the development of the concept of sovereignty and its applicability to Indian self determination. Part II, "Historical Background for Underdevelopment", contains a discussion of the significance of United States economic development in relation to Indian land policy, a summary of the history of Indian water rights, and an analysis of the colonial context as a framework for studying the historical underdevelopment of American Indian economies. Part III, a case study of the Navajo Nation, discusses (1) the Navajo postoral economy and the traditional-modern division, (2) underdevelopment and dependency in the Navajo economy, (3) strategies for increasing Indian governmental income and building a stable economic base, (4) Navajo government taxation of corporations operating in the reservation as a means to augment income and assert sovereignty, and (5) fundamental changes in the Navajo government resulting from 20 years of dependency on mineral leases and royalties. Part IV contains three studies of the politics of Indian underdevelopment and development. (Author/JH)

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ECONOMIC DEVELOPMENT IN AMERICAN INDIAN RESERVATIONS

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RC011803

Native American Studies
University of New Mexico
Development Series No. 1

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ECONOMIC DEVELOPMENT IN AMERICAN INDIAN RESERVATIONS

Native American Studies
University of New Mexico

ISBN 0-934000-00-9

Published by:
Native American Studies
University of New Mexico
Development Series No. 1
Copyright © 1979 by Native American Studies, UNM
Library of Congress Catalog Card Number: 79-64281
ISBN: 0-934090-00-9
Manufactured in the United States of America
University of New Mexico Printing Plant
First Edition

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Editor

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INTRODUCTION

This collection of research articles and essays poses new questions concerning American Indian economic development. Most of the authors are scholars who are involved in various aspects of research and planning directly or indirectly for American Indian governments. The book is perceived as a means to make available information and theories on economic development which are difficult to acquire.

In the 1970's interest in American Indian lands has been stimulated by the possibility that a fair percentage of the total remaining sources of energy natural resources available for exploitation within the continental United States may lie inside Indian reservations, mainly in the West. Natural resources in Indian lands are owned by Indians, but whether Indians actually may be said to control them is another question. American Indian reservations are in a unique "trust" status under the United States government, a status imposed a century ago. The problems arising from issues of how and under what conditions Indian resources may be exploited and who is to benefit pose serious questions.

In the over fifty million acres on over two hundred Indian reservations in 28 states, there are 5.3 million acres of commercial forest land, including about 38 billion board feet of lumber, 44 million acres of rangeland, and 2.5 million acres of cropland. Indian claims to water for development of their land are legally superior. In the Pacific Northwest, Indians have claims to a valuable share of the fish harvest. For mineral resources, figures range from fifty percent to more conservative estimates that are within the boundaries of Indian lands. The most conservative statistics estimate that Indian oil and gas reserves amount to approximately three percent of the total United States reserves amounting to 4.2 billion barrels of oil and 17.5 trillion cubic feet of gas. Estimates of coal reserves range up to two hundred billion tons of identified reserves on 33 reservations in eleven states or fifteen percent of the total identifiable reserves of coal in the United States. Indian uranium reserves amount to 55 percent of United States reserves, and eleven percent of the world total, making Indian reservations the fourth leading producer of uranium in the world. Therefore, Indian natural resources are considerable.*

During the century while Indian lands and resources have been held in trust by the United States government, under the Department of the Interior through the agency of the Bureau of Indian Affairs, the amount and value of Indian lands and resources have been greatly diminished. The record of "trust protection" by the United States has been poor. American Indian lands have been reduced, in the past century, by over two-thirds, from over 150 million to 50 million acres. Resources have been leased at rates considerably lower than ordinary lease arrangements.

Therefore, with all the resources they presently own, Indian reservations present a picture of extreme poverty, poor education, health care and housing. The American Indian Policy Review Commission pointed out:

> From the standpoint of personal well-being the Indian of America ranks at the bottom of virtually every social statistical indicator. On the average he has the

*Much of the data now available on Indian natural resources is a result of the American Indian Policy Review Commission which was established by Congress in the Act of January 3, 1975 (Public Law 93-580; 88 Stat. 1910). See: AIPRC, *Final Report* (Washington, D.C.: United States Government Printing Office, 1976).

> highest infant mortality rate, the lowest longevity rate, the lowest level of educational attainment, the lowest per capita income and the poorest housing and transportation in the land. (AIPRC, *Final Report*, p. 7)

How people may be "wealthy" in resources and poor in social conditions at the same time can only be explained by an historical understanding of the system of colonialism which conquered and controlled peoples of the nonwestern world during the past four centuries.

The book begins with a narrative by Acoma Pueblo poet and writer, Simon J. Ortiz, who speaks to the feelings and the values of American Indian peoples regarding their underdeveloped situation. The voice of the Indian people is often drowned by the noise of "experts" and bureaucrats. In this collection, the ancient values of the Indian peoples, the many changes wrought through time, and the heritage of heroic resistance, are the backbone for an analysis of economic development. Part I also includes an essay by Vine Deloria, Jr., attorney, best-selling author, and Political Science Professor at the University of Arizona, who is Standing Rock Sioux from South Dakota. Deloria traces the ideological development of the concept of sovereignty and its applicability to self-determination for American Indian communities. Authentic economic development must be integrally related to the Indian's right to self-determination and the theory developed by Vine Deloria, Jr. also frames the analyses of economic development included in the volume.

The second part is an historical background for the economic underdevelopment of American Indian societies. Anthropologist Klara Kelley provides keen insight into the significance of United States economic development in its formation of Indian land policy. Norris Hundley, jr., noted western historian and expert in the area of water law, rights and allocation in the western portion of the United States, summarizes the history of American Indian water rights. Economic development, particularly mining, ranching, and agriculture, requires enormous water expenditures, and because land in the West is arid and semi-arid, no discussion of economic development is realistic without consideration of the accessibility of water. The final essay in this section poses the colonialist context as an analytical framework for studying the historical underdevelopment of American Indian economies.

Part III is a case study of the largest American Indian reservation in the United States, the Navajo. The little-studied aspect of the Navajo pastoral economy is the subject of Louise Lamphere's careful analysis. An anthropologist, Professor Lamphere raises key questions regarding the "traditional-modern" dualism which is created by underdevelopment in colonized areas. Lorraine Ruffing, an economist, served on the American Indian Policy Review Commission and the Alaska Native Land Claims Commission. Dr. Ruffing presents a study of the development of underdevelopment and dependency in the Navajo economy. Al Henderson looks at means for increasing Indian governmental income and strategies for internal financing to build a stable and permanent economic base, replacing dependency on federal transfer payments and other forms of unearned income, such as royalty payments. Henderson is Navajo and an economist, presently Director of the Office of Economic Development for the Navajo government. Similarly, Professor Gerald Boyle, Chairman of the Department of Economics, University of New Mexico, shows how Navajo government taxation of corporations operating in the reservation, is a means to augment income and an important assertion of sovereignty. Professor Lynn Robbins, one of the consultants on the Lake Powell Project (Navajo), demonstrates the fundamental changes in the Navajo government that have resulted from twenty years of dependency on mineral leases and royalties.

The final part, IV, contains three studies of the politics of underdevelopment and economic development within the political economy of the United States and contemporary strategy of the transnational energy corporations. Lorraine Ruffing presents a gen-

eral strategy for asserting Indian control over mineral development. The essay by Phil Reno eloquently pleads for the survival of humanity and presents his view of what American Indian peoples have to contribute to that most vital of all goals. Reno is an economist and instructor at Navajo Community College, Shiprock, Navajo Nation whose book, *Navajo Resources and Economic Development* appears in 1979. The final essay summarizes the choices available for Indians.

Perhaps the essays that comprise this book raise more questions than answers. A major point made throughout is that more questions should be asked, that American Indian people are right to be concerned and skeptical about "economic development" as it is being presented to them through government and corporation programs. Easy assumptions and answers are many and dangerously misleading. Though there appear to be many choices available to Indian governments for economic development, actually, few choices exist if the goal of development is self-determination and future well-being.

PART ONE

THE LAND
AND
THE PEOPLE

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1

THE LAND AND THE PEOPLE ARE SPEAKING

Sthehgaadzih Tzikannah Tehneh eh Yaatrah Naitra Guh
(Once Again, Value and Respect Must Come About.)

for Joe, true warrior, teacher
and a leader of our People,
beloved father who nurtured us
who passed back to the earth Spring 1978
Simon J. Ortiz

You keep working, keep doing what you're
doing, you don't have to stop, but think
too as you hear this story and advice.
As you hear these words, let your thinking
become aware of every motion and thrust
of their meaning, and in that way the telling
will become part of your work, your doing,
your on-going, and your life will grow with it.
Go ahead, keep on working. This will become
part of you as all life must, and in that way
you will value and respect this: it's true.

I.

Yes, it's true, you must wonder, as all of us
have wondered, how it was when they came.
They came. People come from places, visitors;
they may stay for a while and then they leave
because they have other places to go, because
they have a home to return to, to take care of.
But these ones, they weren't visitors who came
with gifts nor to trade with us, talk, laugh,
learn from us and learn with us. No, they were
different. They came to our land, to our life.
We studied their faces, their eyes. They came.

First, there were the Kashtuurrha, bearded
and wildeyed, frantic with hunger and thirst.
We gave them food and brought them water but
their faces did not grow peaceful or friendly;
instead, demanding became a way of life for them,
but perhaps they had been like that all along.
And then the Mericano came, lusty, loud, and
although their eyes were lusterless, their
minds and movements were eager and they spoke
of vast schemes, offering their expertise
in exchange for our loyalty, land and labor.

They each had one thing in common although
both did not regard that common thing the same
nor did they respect it much or practice it
beyond using it as a means of gaining what
they wanted from us—our submission and land.

They preached the Christ and the Cross, yes.
Holiness and suffering ordained by the King.
It's true that we knew the sacredness of life,
knew that we had to keep the belief and practice
of regeneration always within ourselves,
and we knew that this was a way of life that had
been learned from many many years of living.
We had known suffering too because it was hard
to live here on this land when sometimes
it didn't rain and food became very scarce,
and we didn't always get along in our minds
and among ourselves, and we knew that we had
to work hard to live. It's true, we have to
work hard to sustain the value and respect
for what keeps our life intact and to keep

our way of thought and belief and struggle
that we call religion; and it's true, we have
to work against suffering that prevents health
and clear thought and adequate strength needed
to care for others. We had to work pretty hard
we knew that then as we know now; it's true.

But that was not what they meant. No,
not in the way they used that meaning.
They said that the religion they brought
was a way of obeying the Word of God,
and because they had brought this Word
it was they who our People should obey.
They said it was written in the Bible
and resided in the objects secured away
in the Church, and they told us we had
to obey the Word or we would be punished,
and they were the ones appointed to carry
out this punishment. The People asked,
Isn't it true that the true life source
that we acknowledge and struggle for
is contained in everything, including
the trees, grasses, mountains, sky, in all
of us? Isn't it true that we must always
try and take care of them because we are
part of all of them too? Well, they said,
it was alright to feel that but not quite
right to think because only man has a soul
and man wrote this Word and made the Chalice
so therefore the power is truly contained
in this Bible and this finely made Chalice.
They told us it was idol-worship and pagan
to use the prayersticks, the holy symbols,
and the sacred constructions we made to use
in our religious practices and beliefs.

Soon, some of us figured out that what
they wanted was for us to submit to the
authority that they wanted over us, telling
us that only in their version of religion
was the truth. For them, it was what
they said: the power and will is with us.
and we want you to submit and be humbled.
It wasn't an issue of religious belief
to them; they wanted power over the People, yes,
and over the land. That's what they meant.

That was the way they came to this land.
That was the way they came upon our People.

II.

We took great care to learn. Always
That was one of the main requirements
of living. From the very beginning of life,
when the People came into being, we knew
we had to keep learning, from experience
from careful observation, from talking.
From the very act of caring for each other
and for the land, we learned this was
the only way that life—plants, animals,
stones, People—goes on; this requirement
is contained within our People's social system
and government; it's right there even though
it's very difficult to uphold today.

We planted corn, beans, squash, cotton,
having received these gifts from the earth.
The plants provided for us over generations
and generations as long as we also provided
for their care and gave back to the earth
what it had given us. And we gave back,
in work, song, prayer, replanted seed, a system
of thought and practice that spoke and acted
upon the responsibility that we had learned
we must have for the land and its fertility
and for the People and their vital health.
The land is not just dirt, stones, clay;
over generations and generations, our People
learned they must care for it because
it provides food, clothing, and shelter,
and we know we are part of the land; and we
are responsible for ourselves in caring
for the land. The corn—there are many
different varieties from many places—grows
when you take care of it and learn also
from its very nature. The stone that you see
all around became our homes. The very stone
of the mesas, canyons, cliffs is the earth,
and it is our home. Very carefully, you
have to regard where it comes from, how it
worked, which stone fits better than others
when you build your home with skill, precision
and economy so nothing of the stone is wasted.

You've seen Mericano contractors work too;
they quickly slap together some cement walls,
angrily nail up two by fours, all the time mad
about the weather, and then they haul away
a large amount of trash to the dump,
and the construction they've built looks
like a house which somebody else will buy
if they have the money. You've also seen
the fields they plant, long rows of plants
which look trapped, afraid, sad, and you
have smelled the chemicals they sometimes
put into the land which they say helps plants
to grow and produce more—but it smells bad
and is probably bad for the land and the people.

Yes, we've planted corn, studied the weather,
the sky, cloud formations for rain, shared
information and knowledge about planting
and caring for the land from among our various
Peoples, and we've received from the corn,
land, clouds, and People because we've tried
to take great care to learn, always, and
to value and respect this learning, always
as a requirement for responsibility and life.

III.

Yes, the railroad came through, soon after
the government surveyed and measured
how much land we had—they said, so we
could know for sure how much there was.
Well, what we found out for sure, soon enough,
was how much land we didn't have anymore.
The railroad came through our best lands
along the river where we had built canals
for irrigation, and they pumped water
from the river to put in their engines.
We appealed to the agent from Albuquerque
but he said it was only fair that we should
do our share in helping the Mericano nation
grow because it would help us too—besides
we could also work for the railroad—and
the papers, like those that said our land
was now surveyed and measured, were signed
already. So we didn't have much to say
anymore though some courageous ones said
they would put a stop to it themselves,

but the railroad and government men said
it was against the Mericano law and our People
would be punished for going against the law.
That sounded exactly like the threat that
the so-called Christian priests said would
come upon us if we went against the law
of their church. And in fact, we were made
to put many of our children on those trains,
to be taken away to schools where they learned
nothing but that kind of teaching. And so,
just like we lost our lands to the railroad,
we lost many of our children to the teaching
of the Mericano government schools and nuns
who turned them away from our language,
our religious system, and our responsibility.

Later, the highways came through too.
You see them, incessant with cars, trucks,
day and night, going east and west, somewhere.
They took more land. They cited us what
they called right of way; that meant we,
the People, had no choice except to let
the highways come through. Right of way,
they said, proud of their words and work,
This paper here expects right of way, mister,
your Indian words don't mean anything.
The government of this state and nation
will take this land for their passage;
that's what right of way means, it's the law,
and even if you don't agree with it, the law
will declare your land public domain and
we will take it legally. They said that
in so many words of progress and common good
and compensation—your men can get jobs
on the highway construction—but many of us
knew it for what it truly was: land theft.

Yes, there were even some who went and saw
one place the highway construction had unearthed
an old homevillage where the People had lived.
They described it, saying, The place of their
old home was sheltered by a hill to the west,
and they must have planted to the south and east
where the mountain provided water for fields.
There was a room that had been dug up
by Mericano from the state museum; they had

found a stone used to grind corn, some tools,
and a tiny dried up baby girl curled up
with prayersticks clutched in her tiny hands.
How old was the old homevillage, when, how long
ago? our People who visited wondered. Later,
the next morning, early, this old man beloved
went and prayed in the remaining shadows
of that baby and her old home, and he left
he said just before the Mericano tractors came
back to resume their state construction work.
How long ago, the old home? you may wonder.
Consider too, what this law of right of way is.

Theft: that's what it was; that's the truth.
Oh, their spokesman said it was for the sake
of all the people that we were giving up land;
it happens to everybody. Look, they said,
even the Mexicans are giving up land too.
And that was true, the grants assigned their
fathers years back for their use, that was
stolen too. In the same way that land was lost
by measurement and survey of it, the state
and nation of the Mericano and his law,
backed by his money, forced the railroad and
highways through our land—yes, you see a few
of our men working on them with picks and shovels.
That's the truth; you can't say it another way: theft.

IV.

What do you people want anyway? we've heard
the Mericano ask – and, yes, there are those
among our own, who've been caused to doubt,
who also ask. Land and life, we have to say
for they are one and the same.
One cannot exist without the other.

The land provides food, our homes; look
at the corn, the stones, life from the land.
It is our life, we do not have anything
without the land. The life of our work
and religious practice, the songs, stories,
prayers, all of it is for the land.
The life of our families, clans, old people
and young people, all of them in a complex
of relationships and caring for each other;
all that is dependent upon the land.

The land is dependent on us too for its tending,
its nurturing, its regeneration; it doesn't
exist the way it is all by itself; it isn't
fertile for growing corn unless we water it
and turn the ground. That's why we have
worked for it, by planting, by cultivation.
That's why we go to the sacred points
and places and pray. The words and meanings
in the songs and prayers speak of mountain,
hills, valleys, rain clouds, snow, everything
that is part of the land because they are
part of the life we have; we must include them
into everything we think, believe, and act upon.
Only in this way will the land and life continue.
Only in this way will the People continue.
There is no other way. There is no other way.

Yes, we have adopted some newer ways of working
the land; it's been happening for years now.
Soon after sheep, cattle, horses were brought
among our People, we could tell even then
what would happen to the land if great care
was not taken to insure its health, fertility,
and regeneration. Sheep and cattle can graze
the land until soon it is without any grass
and it dries and cracks and erosion starts;
we have had to take great care that this does
not happen. Even though we need the livestock
for food and income, we must take care that
it does not become a way by which we ruin
the land and ourselves nor to let the government
use that as an excuse to take more control
like it did not long ago, even slaughtering
sheep, horses, cattle and forcing the People
to sell them. Yes, we have to take great care
that our land and life not be ruined, especially
to take a clear look at new ways of working
for a living, because only in this way will
our future generations be able to share
the benefits of land and continuing life.

It is a simple enough answer: land and life
But it is not simple when we look at even
newer ways of working the land. Look now
at the mining, the oil and coal we talk about.
Look back at the history of the railroad,
how it came upon us and what they told us.

Some of us have worked for the railroad,
got paid for work we did, and our children
had clothes; we bought cars, we travelled
to California. But the railroad took our land,
our very best fields, the irrigation ditches
our mothers and fathers built with their hands.
The government and railroad bigshots, yes,
they told us nothing would change, but
of course we know it always changes, but
the change can either be good or bad, and
we have lived with the change long enough
to know that much of the change has been bad.

And now look at the mines. They started
some years ago, digging with dynamite blasts
and bulldozers, and some of our People
were eager to work for a living in them.
They didn't know that it was [illegible] or good.
No, all they knew was that daily life had changed
in such a way that money was necessary to live.
The children needed clothes, homes need windows,
cars needed gas, and our People had somehow
become pulled into the change without being
thoroughly aware that it was happening or what
was happening. No, all we knew was that we
had become very poor, and dependent, and it is
very hard to be poor, to not have anything.
And so we went to work in the mines so we could
have money, to be paid a wage for work we did.
No, we didn't realize that the mines were part
of what had been happening all along, even
before the railroad, through the era of land
lost to right of way, to now, working in mines
operated by companies whose owners we do not
even know, dependent on them. Yes, we work
in them, and we get paid so we can buy
clothes and food and modern appliances,
so we can pay for electricity which we
didn't want in the first place either. Yes,
that change came upon us, and we've changed
in many ways with it because it is so huge
and forceful. Sometimes, we don't even know
how to comprehend it all, but we must take
great care again to insist that the land
be tended and nourished so it will be fertile.

We must take care and work for a way

in which our need for food, shelter, clothing,
is met by efforts that consider the effects
that this kind of work has upon the land
and People. We must learn how to do that,
like our People learned in the past, and insist
upon that way for it is the only way
by which the land and our life will continue.
And when we answer that Mericano who asks
what we want, we must tell him that this
is what we want: Take care of the beloved land,
its mountains, its water, plant and animal life.
Do not take what will only profit you alone
and leave a useless land and a wasted People.
You have to give back in order to live. That
is what we want – to live. Tell him:
We will fight to live, we will; we have to.

V.

We have lost a lot already; we know.
We lost land and many of our own ways
of working the land in exchange for working
in the mines, for the railroad, highways,
U.S. government. We have lost much
of our strength and courage and much of our
own People's knowledge. But nobody can say
we did not protest vocally and more:
the warrior women and men of our People drove
the Kashtuurrha back to the south because
the hunger and confusion and slavery caused
by them was too much to bear. And again,
years later in the nineteen twenties,
the leaders gathered, yes this is known too,
to fight Mericano Congressmen who were
determined to give title of our very land
to themselves and others, especially those
who would profit from it. Yes, nobody can
say that we did not do those things to fight
although this is true too – that we were
caused to lose confidence and belief
in ourselves to make our own decisions
so necessary for continued struggle. This
we have to rebuild, and we will as we continue
to learn from our experience as we must.

We know that we have lost our land through
trickery, fast-spoken words, promises of money

and favor, backed by a system of Mericano law
that threatens us and keeps us in fear.
We know the threat is not unreal or imagined
because we've known fathers who were punished
for speaking up for the People and our way
of life. We know that the change has made us
frightened, and turned us wrongly against
ourselves, our People, our beloved, our own.
We've seen too many of our fathers and mothers,
sisters and brothers, uncles and aunts turned
upon themselves, drunk and insane, scarred,
dirty, broken. We know this; we know this
too well. We also have come to know that
this kind of unneccessary suffering is different
from the kind of hardship we have to endure
because we live in a land that sometimes
gets too hot and sometimes doesn't rain;
we know it's different from the difficulty
we have to overcome when things are not settled
among our People. Yes, we have learned
that this kind of pain is imposed from outside
of us and kept, on purpose, away from our hands
so we may continue to feel weakened, dependent,
helpless, and disunited among ourselves.

Only too well do we know that missionary
and government agents convinced some
of our grandfathers to agree to landmarks
which then reduced our land base and made them
agree to water usage by ranchers, railroads
and the mines. Only too well do we know
the traders living close by who have said
they were helping us by buying our sheep wool
and cattle – they have made us dependent
on credit to them while their wealth increased.
Only too well do we know that other People,
like our Mexican neighbors, most of whom
are poor like us, have been caused to speak
against us, and we have seen them as opposed
to us while all the time it has been the rich
and powerful which has caused us to fight
each other. Yes, only too well have we come
to know these things. And now, we shall
and we will regain our strength, courage,
and knowledge from what we have learned.

We do not want to and we shall not give up
what has helped us to survive tremendous odds
even though there are some, even among our own,
who say it is too late, that we cannot turn
this change around, that it is futile to talk
about how we must take special care for land
and life. Yes, of course, those outside
powerful and rich forces behind the Mericano
government and the companies whose owners
we do not even know want us to be quiet,
not protest, to give up because it would be
easy then for them to take the rest of our land
and force our men and women to work for them.
We know that there are other poor who suffer,
the Mexicans who lost land too and work
with us in the mines, the Black People,
and the Oakies brought to the mines here.
And now we hear of courageous Peoples who
have taken back their land and life in Africa
and Asia and this is a sure sign that
the force, which was so powerful that
it brought a change upon us and them, that
could not be prevented at the time, is not
so powerful anymore, Yes, we have learned,
as we must continue to learn, that the story
of our struggle is a common one to other People
who have been caused to become poor. And yes,
the advice we offer in sharing is from our
experience and the heritage passed on by mothers
and fathers before us: We must insist on a way
of life that helps us not only to survive,
but to value and respect each other and the land
and every part and aspect of life because only
in this way will the earth live on
and our generations will follow.

Keep working, doing what you're doing,
don't stop; that's the only way you'll gain
what you put into your work. But remember
too: this story and this advice: it is
to become part of your on-going work
and struggle and resistance, just as it was
passed on from the generations and generations
of our grandmothers and grandfathers: yes,
tehneh nyiushru, that way the People
and the land will continue: Life will go on.

2

SELF-DETERMINATION AND THE CONCEPT OF SOVEREIGNTY

Vine Deloria, jr.

Sovereignty is an ancient idea, once used to describe both the power and arbitrary nature of the deity by peoples in the Near East. Although originally a theological term it was appropriated by European political thinkers in the centuries following the Reformation to characterize the person of the King as head of the state. The complicated political intrigues of medieval Europe had produced the strange doctrine that rulers of the temporal realm were chosen by God and divinely ordained to rule their nations. Political power was thus located in the person of the sovereign who was limited only by his relationship with God.

As European nations encountered peoples of other continents their first presumption was that these peoples shared the view that political power must be located in a specific person and they attributed immense absolute powers to those spokesmen of other nations who dealt with them. Thus leaders of Indian communities, before they were called "chiefs" were commonly called "kings" and were believed to represent the nationhood of the people they represented.

In the technical language of the seventeenth and eighteenth centuries, sovereignty was the absolute power of a nation to determine its own course of action with respect to other nations. Quite often this power was interpreted as the independent power of making war although even Europeans would admit that for smaller nations, sovereignty was restricted to the power to regulate one's own internal functions in the field of domestic relations. Few nations were powerful enough to insist upon total independence from other nations and legal fictions replaced a frank discussion of the actual state of affairs. Treaties between equal "sovereigns" often disguised the fact of interdependence of European nations.

With the eighteenth century colonial wars for possession of North America, Indian communities were acknowledged to have a European version of sovereignty as long as they held sufficient territory and military strength to be an important factor in determining the outcome of the colonial conflicts. As the respective European nations retired from the field and England became predominant on the continent the idea of Indian sovereignty became less popular. The Iroquois, for example, under their famous Haldimand agreement with England, became joint conquerors of Canada during the French and Indian War (Seven Years War) which concluded in 1763. But with the French excluded from political activities in North America and England and Spain comfortably dividing the continent and separated geographically, there was no need to dwell upon the elevation of the League of the Iroquois to international status. While such political theorists as John Locke and Charles Montesquieu referred to the Iroquois as an instance of nonwestern people establishing a government with sufficiently precise institutions to be accorded national status among the other countries, in practical terms the English preferred not to mention Indian nations and the idea of political sovereignty in the same context.

The American Revolution revived the idea of Indian sovereignty. While reciting polite phrases about the equality of man, the American revolutionaries were plainly outside the

law of civilized societies in their revolt, and to gain respectability they adopted the most acceptable posture toward the Indians possible with the hope that by demonstrating their ability to act in traditional political terms they could allay the fears of other nations so as to legitimize their activities. Thus in order to neutralize the Indians on their northern and western frontiers the Americans signed several treaties during the course of the Revolution which greatly expanded the acknowledged powers and status of these Indian peoples.

Two of the first series of treaties with the Indians, the Delaware and Cherokee treaties, made provisions for the appointment by the Indians of a delegate to the Continental Congress when they wished to be represented in the councils of the new American nation. These articles were later neglected but they serve as an indication of the political status which the Americans perceived the Indians to possess. The first period of political relationships between Indians and the United States can be said to begin with the Revolutionary War and continue through the War of 1812 until the conflict with the British was resolved and the Americans were assured of their own political independence. During this time Indian treaties carefully distinguished the respective political rights of the two contracting parties and passports, provisions for civil and criminal jurisdiction and extradition indicated the belief that Indian governments were fully capable of dealing with both internal and external affairs. With the withdrawal of Great Britain from activites in the Ohio and Mississippi valleys following the War of 1812, the respective Indian communities who had been allies with the United States and Great Britain were required to sign peace treaties acknowledging as superior sovereign that larger nation within whose territorial claims they found themselves at the conclusion of the war.

The United States claimed political sovereignty over the interior of North America almost by default. Neither Britain nor Spain could afford to carry on extensive military activites in North America and were content to allow the Americans to push their way into the midcontinent area without much molestation or conflict. But the United States, arguing that its claim to lands in the Interior was a valid one that should be respected by European nations, adopted the posture that it had inherited from Britain the superior title to lands based on the doctrine of discovery which had been used a century earlier to establish European state claims to various parts of the nonwestern world. Discovery was a difficult doctrine to defend. John Marshall, describing it in *Worcestor v. Georgia*, remarked:

> It is difficult to comprehend the proposition that the inhabitants of either quarter of the globe could have rightful original claims of dominion over the inhabitants of the other, or over the lands they occupied; or that discovery of either by the other should give the discoverer rights in the country discovered, which annulled the pre-existing rights of its ancient possessors.[1]

But the need to classify and identify the actual status of the Indian governments continued to be a pressing problem if the United States were to successfully expand westward.

Marshall linked the status of Indian lands and governments together to insist that as lands were sold or taken, the extent of sovereignty also declined in importance. In *Johnson v. McIntosh*, he wrote:

> They were admitted to be the rightful occupants of the soil, with a legal as well as just claim to retain possession of it, and to use it according to their own discretion; but their rights to complete sovereignty, and their power to dispose of the soil at their own will, to whomsoever they pleased, was denied by the original fundamental principle that discovery gave exclusive title to those who made it.[2]

Marshall's reconciliation of political sovereignty and land ownership did not last a decade after he first articulated it.

In two Cherokee cases the question arose concerning the precise status of Indian governments: If the Cherokees were a "foreign" nation, they had access to the Supreme Court in an original action; if not, then they were barred from the United States courts and their remedies. These cases tied jurisdictional questions involving lower American political entities such as counties and states with Indian governmental sovereignty which had traditionally been a subject of international interest thus developing a most confusing and conflicting theoretical basis for dealing with Indians by the United States. In *Cherokee Nation v. Georgia*, Justice McLean, concurring with Marshall's majority opinion, developed a much more comprehensive analogy to then-existing doctrines of political rights when he said of the Cherokees:

> Their condition is something like that of the Israelites, when inhabiting the deserts. Though without land that they can call theirs in the sense of property, their right of personal self-government may exist though the land occupied be in fact that of another. The right to expel them may exist in that order, but the alternative of departing and retaining the right of self-government may exist in them. And such they certainly do possess; it has never been questioned, nor any attempt made at subjecting them as a people, or restraining their personal liberty except as to their land and trade.[3]

Here Justice McLean attempts to sever political status from land ownership in effect making the Cherokees what one would describe as an "expectant" or "incipient" nation in the eyes of the United States.

In *Worcester v. Georgia*, the companion case which was heard the year following Cherokee Nation, both Marshall and McLean made another attempt to define the status of Indian tribes with some clarity. Marshall suggested a peculiar status for the Cherokees, writing:

> The Indian nations had always been considered as distinct, independent, political communities, retaining their original natural rights . . . with the single exception of that imposed by irresistible power, which excluded them from intercourse with any other European potentate than the first discoverer of the coast of the particular region claimed; and this was a restriction which those European potentates imposed on themselves, as well as on the Indians . . . the settled doctrine of the law of nations is, that a weaker power does not surrender its independence—its right to self-government—by associating with a stronger, and taking its protection. A weak state, in order to provide for its safety, may place itself under the protection of one more powerful, without stripping itself of the right of government and ceasing to be a state.[4]

Marshall described Indian peoples as "domestic dependent nations."

Once possessing this status as domestic dependent nation, an Indian people could only lose it by voluntarily surrendering the remaining attributes of sovereignty or by becoming so shattered by the passage of events as to be incapable of exercising any social or political powers whatsoever. Justice McLean suggested the latter alternative when he wrote:

> If a tribe of Indians shall become so degraded or reduced in numbers, as to lose the power of self-government, the protection of the local law, of necessity, must be exteneded over them. The point at which this exercise of power by a state would be proper, need not now be considered: If indeed it be a judicial question . . . so long as treaties and laws remain in full force, and apply to Indian nations, exercising the right of self-government, within the limits of a state, the judicial

> power can exercise no discretion in refusing to give effect to those laws, when questions arise under them, unless they shall be deemed unconstitutional.[5]

The anomaly of federal Indian law is that the two Cherokee cases represent the best efforts of the United States legal authority to arrive at a satisfactory definition of the status of an Indian government with respect to state and federal governments. All subsequent decisions revolve about the definitions given in these two cases and variances occur in direct proportion to the relative knowledge of the federal government with respect to the conditions of the Indians involved in any specific despute.

As this century began the historical pendulum was swinging toward a more profound definition of Indian sovereignty and the original content of sovereignty as a reservoir of political powers was revived with respect to Indian governments. In *Talton v. Mayes* the Supreme Court carefully distinguished those political powers which had been inhibited by Congress and those which flowed from the natural rights of a "distinct people" which could not be curtailed by legislative action:

> But the existence of the right in Congress to regulate the manner in which the local powers of the Cherokee nation shall be exercised does not render such local powers federal powers arising from and created by the constitution of the United States . . . It follows that as the powers of local self-government enjoyed by the Cherokee nation existed prior to the constitution, they are not operated upon by the fifth amendment, which, as we have said, had for its sole object to control the powers conferred by the Constitution on our national government.[6]

With *Buster and Jones v. Wright*, the idea of a residual sovereignty inherent in Indian governments became a positive factor in protecting the communal decisions and values of Indian communities:

> The authority of the Creek nation to prescribe the terms upon which non-citizens may transact business within its borders did not have its origin in an Act of Congress, treaty or agreement of the United States. It was one of the inherent and essential attributes of its original sovereignty. It was a natural right of that people, indispensible to its autonomy as a distinct tribe or nation, and it must remain an attribute of its government until by the agreement of the nation itself or by the superior power of the republic it is taken from it . . . The fact remains nevertheless that every original attribute of the government of the Creek nation still exists intact which has not been destroyed or limited by Act of Congress or by the contracts of the Creek tribe itself . . .[7]

While court decisions have generally supported this doctrine during this century, different administrations have seen attempts to erode or replace the idea of inherent sovereignty.

During the Eisenhower administrations, Congress "terminated" federal supervision over several Indian peoples. But this "termination" was made subject to the most excruciating examination by the Supreme Court which concluded in the case of the Menominees that no intention existed in the minds of Congress to violate any treaty which the government had with them. Nearly all efforts to restrict inherent sovereignty, if contemplated by the legislative branches of state and federal governments, have generally failed to survive the precision demanded by the courts which would assure them constitutionality.

In the course of these developments, it has become increasingly clear that the idea of Indian sovereignty is not simply a legal concept. Numerous references to sovereignty cite the notion of a distinct people, separate from others, as the chief characteristic of Indian sovereignty indicating that so long as the cultural identity of Indians remains intact no specific political act undertaken by the United States government can permanently

extinguish Indian peoples as sovereign entities. Although sovereignty originated as a means of locating the seat of political power in European nations, it has assumed the aspect of continuing cultural and communal integrity when transferred to the North American setting.

Sovereignty has become a difficult political issue in recent years because of its exclusive use as a legal concept. The Supreme Court has shied away from articulating an expanded theory of Indian sovereignty in recent years although it has used peripheral doctrines to bolster sovereign and self-governing powers of Indian governments. The Supreme Court, referring to Indian sovereignty in the McClanahan case, tried to avoid the issue:

> The trend has been away from the idea of inherent Indian sovereignty as a bar to state jurisdiction and toward reliance on federal pre-emption . . . The modern cases thus tend to avoid reliance on platonic notions of Indian sovereignty and to look instead to the applicable treaties and statutes which define the limits of state power.[8]

The reasoning is deceptive here. Obviously, the "applicable treaties and statutes" are precisely those which describe and articulate the sovereignty of the respective Indian nations in relation to the United States. So little is gained with this definition except additional time in which the passage of events can present a better opportunity to comment on the topic.

The conflict over Indian sovereignty today originates in part because of the misconception held by the non-Indians with respect to social institutions and nationality and the adoption of that misconception by Indian political leaders, in some cases, as a means of communicating with and influencing the larger social and political institutions. North Americans have a tendency to look at the sources of power rather than the proper exercise of it. Thus concern is focused on whether or not a certain institution has the right to do certain things rather than the wisdom of what it does. American politicians are discarded when they have lost their sources of power (usually financial), not when they have done wrong. Social and moral responsibility does not revolve about right and wrong but whether, in fact, an institution or person should be involved with the subject matter under consideration.

This tendency to focus on the origin of things rather than their essential characteristics has led American society into a desperate situation in which it cannot solve the simplest problems but only seems to aggravate conditions with each attempt to bring about order. The decline of American prestige abroad and the drastic reduction of faith in the American system as indicated by the "credibility gap" which public institutions now suffer is further testimony to this ingrained fallacy and misidentification of the source for the substance of things. When we focus specifically on the field of Indian affairs it is not difficult to see that the major concern of the Bureau of Indian Affairs with respect to the Indian peoples is whether they can exercise certain powers, not the wisdom of the course under consideration.

In the 1970's American Indians have made their appearance on the world stage. This movement began with the widespread publicity which the occupation of Wounded Knee received and continued on with the efforts of delegations of traditional Indians to achieve recognition in the eyes of various United Nations committees and commissions. The presentation at the Palais des Nations (UN) in Geneva, Switzerland, in the fall of 1977 brought home to many Indians the realization that certain types of political and cultural activities had a place on the world stage and could not be restricted to the domestic affairs of the United States. Insightful American thinkers are also beginning to realize the radical change which this perception is making in the eyes of other nations regarding the

American postion in the world. The discussions which some resource-rich Indian governments have had with OPEC nations are certain to have additional repercussions.

What is particularly important in the movement of Indians onto the world stage is that the cultural traditions have proven the most fruitful manner of communicating national and political existence to other nations. This aspect of communal existence is precisely on point in historical perspective since the recognition of political sovereignty was originally a projection by Europeans of their own institutional structures into the activities of another cultural tradition. The majority of Supreme Court decisions which treat with sovereignty refer to the Indians as a "distinct people" and this characteristic seems to dominate the immediate perceptions which courts have concerning the continued existence of attributes of sovereignty. Sovereignty, in the final instance, can be said to consist more of continued cultural integrity than of political powers and to the degree that a nation loses its sense of cultural identity, to that degree it suffers a loss of sovereignty.

When we view sovereignty in this broadly expanded light, new possiblities for constructive action arise. Cultural integrity involves a commitment to a central and easily understood purpose that motivates a group of people, enables them to form efficient, albeit informal social institutions, and provides for them a clear identity which cannot be eroded by the passage of events. Sovereignty then revolves about the manner in which traditions are developed, sustained, and transformed to confront new conditions. It involves most of all a strong sense of community discipline and a degree of self-containment and pride that transcends all objective codes, rules, and regulations. Unless individuals have a commitment to a larger whole they cannot function efficiently and unless a nation is composed of committed individuals it cannot function with the efficiency that sovereignty is meant to describe.

A self-disciplined community that holds itself together and acts with a unified vision possesses sufficient sovereignty to confront and resolve any difficulty. Much of the erosion of Indian sovereignty is not through the passage of laws of Congress taking away powers of self-government, but rather the alienation of Indian citizens who refuse to be bound by Indian community decisions and values. Unless a political entity can act with the overwhelming majority of its constituents supporting it, it cannot function for long. The Viet Nam experience had demonstrated this truth to the United States though few politicians seem to have learned this important lesson.

An urgent need exists to return to traditional ways of participating in social and cultural functions of the community. This need is presently articulated under the general theme of self-determination and is expressed politically in support of Indian sovereignty. But complex institutions and institutional habits which have been imposed over the course of this century cannot be eliminated in an instance even with the most profound exercise of the commuity will and determination. A gradual transition back to a more normal and spontaneous expression of community values and traditions must be encouraged so that individual and community growth becomes a natural rather than an artificial or repressive development. The first step in this process of restoration and reconstruction is transferring educational and social welfare functions to complete Indian community control. Indian governments must be allowed to structure these activities according to traditional precepts rather than being required to follow rules, regulations, and eligibility standards established for American society.

The standard arguments against total local control of these important social and cultural functions usually revolve about the ability of the local community to finance its own activities. But this argument is based upon the assumption that human experiences are contingent upon one's ability to pay without the corresponding admission that a situation artificially-produced will continue to produce problems until it is returned to its normal

condition. If we base peoples' opportunity to solve problems upon their ability to finance their opportunities we simply aggravate conditions in which no solutions can be found and ultimately produce a situation in which all of society begins to falter.

If there was an assurance, with no substantial doubt, that the present direction of social programming would produce predictable results, then this argument would have some validity. But the present configuration of social problems, in Indian communities as well as other poor communities in the larger society, would argue against current theories and concepts and in favor of more traditional methods. Since the continuance of Indian cultural traditions is well within the concept of sovereignty and at the same time falls within the mainstream of human development processes, both cultural and political solutions can be devised through this strategy.

Insofar as Indian goals and customs may not correspond to present understanding of national education, economics, and social welfare concepts, a word of caution must be given. The present developments in American society in the creation of institutional solutions are all divisive steps which do not bring together ideas but perpetuate isolation of individuals and institutions. The direction proposed is a means of allowing human energies and understandings to converge and come together to form a more sensible picture of human life. If the same process could be initiated in the larger society the problems would begin to resolve themselves as growth processes would bring presently isolated programs and ideas into relationship with each other.

"Sovereignty" is a useful word to describe the process of growth and awareness that characterizes a group of people working toward and achieving maturity. If it is restricted to a legal-political context, then it becomes a limiting concept which serves to prevent solutions. The legal-political context is structured in an adversary situation which precludes both understanding and satisfactory resolution of difficulties and should be considered as a last resort, not as a first instance in which human problems and relationships are to be seen.

2. NOTES

1. *Worcestor v. Georgia*, United States Reports (Vol. 315, 1832) p. 515.
2. *Johnson and Graham's Lessee v. McIntosh*, Wheat Reports (Vol. 8, 1823) p. 523.
3. *Cherokee Nation v. State of Georgia*, United States Reports (Vol. 30, 1831) p. 1.
4. *Worcester v. Georgia*, p. 517.
5. *Ibid*, p. 518.
6. *Talton v. Mayes*, United States Reports (Vol. 16, 1904) p. 376.
7. *Buster and Jones v. Wright*, Federal Reports (Vol. 135, 1905) p. 947; Appeal, United States Reports (Vol. 203, 1906) p. 599.
8. *McClanahan v. State Tax Commissioner*, Arizona Appelate Reports (Vol. 14, 1971) p. 452.

PART TWO

HISTORICAL BACKGROUND FOR UNDERDEVELOPMENT

3

FEDERAL INDIAN LAND POLICY AND ECONOMIC DEVELOPMENT IN THE UNITED STATES

Klara B. Kelley

This study will examine historical changes in three aspects of federal Indian land policy:[1] 1) The region of the United States where most expropriation of Indian territories occurred; 2) The dominant policy the government used to expropriate Indian lands; and 3) The amount of acreage expropriated.

Federal Indian land policy may be grouped into seven periods:

1. Trade and treaty reservation agreements with Indian peoples east of the Mississippi (1776–1810).
2. Removal to uncolonized territory west of the Mississippi (1810–50).
3. Treaty reservations in colonized territory (1850–75).
4. Allotment of reservations (1875–1920).
5. Consolidation of reservation lands (1920–45).
6. Termination of federal trusteeship over Indian lands (1945–60).
7. "Self-determination without termination" (1960–present).

During the first period, the federal government established its monopoly over dealings with the Indians, and negotiated treaties and trade agreements with Indian communities east of the Mississippi. Before this period, Indian communities in the thirteen British colonies and their claimed western territories had often made land grants to large private landholders, sometimes as part of trade agreements. These landholders were often speculators who subdivided the land and sold it to small farmers for sizable profits. Warfare between colonists and Indians also resulted in the total expropriation of some Indian communities. Sometimes the British colonists sold Indian captives into slavery, as after King Philip's War in New England during the 1670's. The colonial governments had acquired Indian lands by purchase and treaty as well as by force. These agreements allowed some Indian peoples to remain on part of their original domain and opened the remaining land to public sale, again often to speculators. Also, some of the colonies claimed territories west of their western boundaries which were occupied by Indians. After the end of the French and Indian War in 1763, the British Crown favored confining Indians to territory west of the Appalachians and closing the area to colonization.

After the founding of the United States, the Continental Congress asserted its monopoly over dealings with the Indians. This assertion was part of a broader public land policy in which the Congress demanded that the states cede to it their western territories, which it would then administer as public domain. This action was necessary to prevent chronic frontier warfare between settlers and Indians. But another purpose was to prevent uncontrolled land speculation, after acquiring public lands between the western boundaries of the original thirteen states and the Mississippi in 1780. While most Indian communities in the original thirteen states had already been expropriated during the British era, pressure for western lands led Congress to take over more Indian lands. The

pressure of settlers from the Atlantic Seaboard and New England was significant—18,000 in 1788 alone moved into the Ohio country. The invasion pushed the Indians into agreements in which they ceded huge tracts to the federal government, but retained some land for themselves and were often promised annuities and military protection against squatters in exchange.

The lands that the Indians ceded to the federal government became part of the public domain. Generally the government favored speculators by offering these lands for public sale in relatively large tracts. In 1785 the minimum purchase was 640 acres, although this was reduced several times so that by 1834 it was down to forty acres.

The second period began around 1810 when the Chickamaugan Cherokees moved voluntarily to Arkansas territory. They did so at the suggestion of President Thomas Jefferson, who saw the Louisiana Purchase as a solution to the "Indian problem" because it provided uncolonized lands to which Indian people could remove. But the government had little success in removing many communities until the 1830's, partly because of armed resistance among the southern Indian nations and those of the Old Northwest, organized by Tecumseh, incorporating the Creek Confederacy. After 1825, no more reservations were granted in states or territories, and eastern Indians were removed into the uncolonized area north and west of the Missouri and Arkansas Territories. In 1830, Congress passed the Indian Removal Act. Between 1832 and 1842 a number of Indian communities east of the Mississippi and in the first tier of states west of the river, except northern Minnesota, were removed westward. After forcing the huge Cherokee nation to move to Oklahoma, the state of Georgia distributed their lands through a lottery to become slave plantations. But usually the lands that Indians ceded to the federal government in removal actions were offered for public sale, bought by speculators, and subdivided for sale to settlers at much higher prices.

Very often allotment in severality accompanied removal. Treaty agreements, in some cases, provided for large land grants to certain individuals. In this way, the government, presumably responding to the interests of speculators, used allotment of large tracts as a means by which to support the fur traders and to gain their support for government policy. In the Old Northwest Territory, Indian officials would often surrender large tracts of land to the government in exchange for cancellation of debts to the monopolistic mercantile/fur trading firms, such as John Jacob Astor and the American Fur Company.

Indians ceded 3.9 million acres of land in the Old Northwest Cession of 1817 with the Winnebago Treaties of 1819 and 1832, which ceded parts of Wisconsin and Illinois and with the removal of the five southern Indian nations from Georgia, Alabama, and Mississippi in 1835–36.

In 1830 Congress had restricted removals to Oklahoma, eastern Kansas, southeastern Nebraska, Iowa, and Minnesota. But between 1850 and 1875, the federal government opened up this area as well as territory farther west. The result was further expropriation of Indian communities. By 1875, most Indian peoples were on reservations and allotments. The government again used treaties for this purpose, as always stipulating large cessions of Indian lands to the public domain. However, like treaties in the earliest years of United States independence, and unlike those in the removal period, these treaties often provided for reservations within the territory being settled, rather than for removal although a number of Indian communities were removed to the Oklahoma Territory during the later period.

The peak period for treaty ratification was between 1853 and 1856, during which time more Indian acreage was alienated than in any other period. Congress opened the Kansas and Nebraska Territories in 1854 and thousands of land-hungry settlers rushed in, many squatting on Indian lands, and they were protected by the United States army, which was

supposed to keep order in the territory. The pressure from settlers and the army forced the Indians to cede lands in treaties, many of which also provided some allotments to individual Indians. Indians were removed to Oklahoma in 1859.

Many of the treaties, paricularly those with Kansas and Nebraska Indian communities allowed the transfer of large tracts of land to the railroads without becoming public domain. The railroads then subdivided the lands and sold small plots to settlers. These sales financed the construction of some roads. By giving the railroads large tracts for speculation, the policy inflamed the western settlers to oppose treaties with Indians. Partly as a result of this pressure, Congress ratified no more treaties after 1871. Despite the 1871 Congressional moratorium on treaties, the government continued to restrict western Indian communities to reservations, usually by military force. These reservations were not made by treaty but by executive order.

Between 1875 and 1920, allotment, a feature of earlier treaties, became the dominant means of expropriation. This policy broke up Indian lands into individual plots, particularly on the Plains and in Oklahoma Territory. The individual allotments were smaller than in earlier times, when individual Indians aligned with traders and speculators received large grants. Beginning in 1875, Congress allowed Indians to homestead under the provisions of the 1862 Homestead Act if they would renounce all claims to Indian trust lands.

Beginning in 1879, bills to allot all Indian lands appeared in Congress. The General Allotment (Dawes) Act finally made the policy official in 1887. It proposed to terminate federal trusteeship of all Indian lands, not just those of particular Indian communities, as in the past, by giving each household a plot, usually 160 acres, to farm. Any remaining land, the government put up for public sale, or would buy from the Indians and open to homesteaders under the provisions of the 1862 Homestead Act. The federal government would retain trusteeship over the individual household's allotment for 25 years, and the property could not be taxed during that time. Afterward, the allottee would receive a patent in fee simple, making the land taxable and alienable. The peak period for allotment occurred between 1887 and 1900, during which the government reduced total Indian holdings by half. The Indian communities of the Great Plains and Oklahoma bore the brunt of the policy. Not only the "surplus" lands, but the Indian allotments themselves, readily fell into the hands of non-Indians. The methods of the latter included legal chicanery and even murder—24 unsolved murders occurred in a three year period in the oil-rich Osage region of Oklahoma, and included shooting, poisoning, and blowing up a house with nitroglycerin.

In the 1870's, the Indian Bureau received a number of petitions to exploit minerals on various reservations, which at first it rejected. Subsequently it developed a number of leasing policies for reservation lands. In 1891, Congress allowed Indian trustees to lease their allotments. This allowed more efficient use of the land by non-Indian farmers and cattle ranchers who wanted access to large contiguous tracts which the quarter-section allotment policy had fragmented. In 1902, the Secretary of the Interior made the first oil and gas leases on Indian trust lands. These were in Oklahoma Indian Territory. By 1908, Interior had approved 22,000 others. Despite the 1879–89 invasion of the eastern Oklahoma Indian Territory by the "Boomers," allotment among the Indian nations in Oklahoma had been delayed until 1898. Oil speeded up their expropriation as speculators used devious means to gain control of Indian allotments. In 1917 Congress again liberalized the conditions under which an allottee could dispose of the land. As a result, by 1920 many acres of allotted land had passed from Indian hands. Yet despite rapid expropriation, between 1902 and 1910 the federal government began Indian reclamation, forestry, and conservation programs that were to blossom during the Depression.

During this period, as in the preceding period, pressure on Congress to accelerate Indian expropriation came from hordes of impoverished farmers, from the railroads and speculators and merchants. Mining and timber interests also wanted access to Indian lands, and therefore the speculators focused on the timber and mineral country of the Rockies and Pacific Northwest, and the oil lands of Oklahoma as well as on the agricultural lands always sought.

In response to the mining and timber interests, various presidents throughout the period, especially Theodore Roosevelt, used the executive order to alienate reservation lands and allocate them to the public domain. In this way, large timber and mining companies could exploit the lands without having to deal with the more intricate Indian land-leasing procedures. Federal policy at this time also made public lands available for timber and mining companies to exploit. In the 1870's and 1880's, Congress enacted the "Timber and Stone," "Timber Culture," and "Desert Lands" laws, which in various ways allowed speculators to acquire large tracts to lease to corporations. Much of this legislation was repealed around 1891, the year in which Congress also authorized the creation of national forests on public lands. Together with the law of 1891 allowing leasing of Indian allotments, the 1891 legislation reduced speculation and gave the timber and mining companies access to resources through leases at low rates. The Mineral Leasing Act of 1920 was a further measure which eased access to Indian lands.

In 1920, the Secretary of Interior began issuing policy directives to the Bureau of Indian Affairs to curtail allotments, although the Allotment Act continued in effect until 1934, when the Indian Reorganization Act superseded it. The directives curtailing allotment mark the beginning of a trend in federal policy to uphold Indian land rights and consolidate Indian holdings. Other landmarks in this direction was the Pueblo Indian's defeat in 1922 of the Bursum bill in Congress which would have expropriated lands of the Pueblo Indians of New Mexico, followed by the establishment of the Pueblo Lands Board in 1924 to hear Pueblo land claims. Congress also abolished the use of executive order to alienate Indian lands in 1927, and it commissioned the Meriam Report, published in 1928, which recommended consolidating reservation lands.

The major policy development in this period, the Indian Reorganization Act, came in 1934. The Bureau of Indian Affairs pursued the policy embodied in this statute most aggressively during the ten years following its passage, when John Collier was Commissioner of Indian Affairs. The Act affirmed federal trusteeship over Indian lands and allowed for the government to restore some lands to the Indian communities which had been dispossessed. It also stipulated that if an Indian community agreed to the provisions of the Act, which included organizing a representative Indian government, the community could apply as a corporation for various economic benefits under the Act and other legislation. During this period, the Bureau of Indian Affairs also tried to increase reservation lands and manage them according to conservationist principles. Bureau resource surveys indicate that most reservation lands were grazing or timber lands and therefore could only produce significant income for Indians if managed in large units. The Indian Reorganization Act enabled Indian governments as corporations to control management. Nevertheless, members of Congress introduced many bills between 1937 and 1945 to remove restrictions on private acquisition of Indian land and to terminate the Bureau of Indian Affairs. In the Great Plains, the Bureau encouraged Indians to sell or lease their land, with the result that the Pine Ridge Sioux, for example, sold their cattle following World War I to lease land to wheat farmers, and have since struggled to control contiguous areas sufficiently large for renewed cattle operations.

Federal Indian land policy during this period is consistent with public land policy. The latter involved consolidating large tracts of public lands so that they could be managed

according to conservationist principles, and then maintaining them in this way by limiting use through leases to private enterprise. This type of public and Indian land management since the 1890's reduced land speculation by allowing private enterprise direct access to the land. The giant enterprises, mostly timber and mining companies, were the only influences on earlier federal land policy that remained significant as an economic force after the Depression.

Toward the end of World War II, forces within the federal government began another policy reversal, the move toward terminating Indian reservations. In 1946 Congress created the Indian Claims Commission to settle Indian land claims, a step Congress considered necessary before termination. In 1947 Congress saw a number of bills to expropriate Indians in various ways. In the same year Congress asked the Bureau of Indian Affairs for a list of Indian reservations according to their readiness for termination. One factor in determining "readiness" was the presence of commercially valuable resources. In 1953 the House of Representatives passed HCR 108, a policy statement to terminate federal trusteeship of individual reservations as quickly as possible. Those reservations which the Bureau and Congress found ready to "manage their own affairs" were terminated immediately. Remaining reservations would be prepared by the Bureau for eventual termination through economic development and social service programs. Those terminated included the Menominee of Wisconsin (since restored trust status); the Klamath and several other small reservations in Oregon; the Alabama-Coushatta of Texas; the Uintah-Ouray Ute and several Paiute bands in Utah; and a number of small reservations in California. However, most acreage alienated during this period was in the agencies of Billings, Montana; Aberdeen, South Dakota; Muskogee and Anadarko, Oklahoma, where the Bureau sold allotted lands.

Lands of the terminated Indian peoples changed status in several ways. Some reservations remained real property held by the Indian government as a corporation. Others, like the Klamath, were allotted to individual members with the "surplus" sold to the government and retained as public land. The Menominee Reservation became a county with the land "publicly" held by county residents. Timber companies benefited from some terminations, especially the Klamath, for lease terms are more liberal on public domain than on reservation lands. Some of the Paiute lands in Utah were suspected to have oil and uranium, and the Bureau transferred trusteeship to a Salt Lake City bank. Much of the Northern Cheyenne land in Montana and land in the Dakotas fell into the hands of ranchers, as the Bureau, in 1955, lifted restrictions placed by the Collier administration on selling allotments that would break up timber or grazing management districts.

While trying to terminate Indian reservations, and reduce others, the federal government also tried a new form of "removal" by relocating individual Indians into cities by helping them get job training and find jobs. In a parallel move, the Bureau tried to draw manufacturing plants to the reservations as part of the effort to "prepare" Indian people for termination. Despite subsidies from federal and Indian funds, these enterprises generally did not succeed due to the depressed state of the national economy.

After 1961, the present day official policy of "self-determination without termination" took shape. During the 1960's and early 1970's, the federal government has treated the Indian governments as corporate political units, and established economic development programs throughout the federal bureaucracy which Indian governments can contract to operate. Such programs probably had the greatest economic impact between 1964 and 1968 during the "War on Poverty" period. During this time, the Bureau negotiated a number of mineral, oil, and gas leases with large corporations providing minimal lease and royalty payments to the Indian governments. Another group of leases went to manufacturing concerns, especially defense contractors during the Vietnam War, for plant space provided by various Indian governments with Bureau funding.

During the same period, the federal government began to concern itself with the lands of Alaska natives. A few native communities and government workers acting on their behalf had asked to have reservations set aside since early in the century, but Congress had done nothing about native claims. Congress had even extended the Indian Reorganization Act to Alaska natives in 1936 and the Bureau had helped them form village corporations without action to clear their title to land. The Alaska Statehood Act in 1958 authorized the state to pick land from the public domain, and the Bureau of Land Management began setting aside "public" lands for various purposes. Native Alaskans often occupied or used these lands. Oil discoveries after 1960 on land occupied by native peoples prompted the oil companies to seek land title settlements so that they could make binding lease arrangements. Oil raised the stakes in the contest over lands between the state and the native people. The state opposed reservations for native communities because it receives all revenues from its own lands and 90 percent of revenues from federal lands, but not necessarily any from native lands. Finally, Congress enacted the Alaska Native Claims Settlement Act in 1971, reportedly under pressure from the oil companies. This legislation appears as a sort of balance between the reservation principle and termination. It allows native communities to form local and regional corporations and to select tracts up to a certain maximum acreage, which will exist in federal trust for 25 years but can be alienated after that by the corporation rather than the individual.

The Alaska Native Claims Settlement Act appears ambiguous toward the reservation principle, and since then, interests in the western states of the "lower 48" have increasingly advocated termination.

By the middle 1970's, sentiment for termination was becoming widespread in the western states, especially those in which the Sioux and Northern Cheyenne live. In 1973, during the confrontation at Wounded Knee, South Dakota, local non-Indian ranchers organized for "self-protection" into a group which became "Civil Liberties for South Dakota Citizens" (CLSDC) and advocates termination. This group and others like it have emerged in various parts of the West. Often they are affiliates of the National Rifle Association, presumably for access to the NRA's legendary Congressional lobbying apparatus. Such groups are also affiliated with the "Interstate Congress for Equal Rights and Responsibilities," formed in 1975. In 1977, the Western Council of State Governments called for the federal government to give the states authority over reservation land use and to prohibit Indian governments from taxing non-Indian concerns. And a dozen or so bills have appeared in Congress to modify or abrogate Indian treaties. The two bills that have brought the greatest outcry from Indian governments and organizations are those sponsored by Representative Jack Cunningham (defeated in his reelection bid in 1978) and Lloyd Meeds, both of Washington state. The Cunningham bill would have abrogated all treaties, in most cases without compensation. The bill died in committee in 1978. The Meeds bill would restrict Indian water rights and legal jurisdiction.

Causes of Changes in Federal Indian Land Policy

The preceding account indicates that the burden of expropriation fell on Indian communities increasingly farther west with time, though Indians on the West Coast suffered expropriation before those in the Rockies, North Plains, and Southwest due to the opening of the "Oregon Territory" and the gold mines in 1848. The westward movement of settlers accounts for this pattern, as settlers demanded most land before the turn of the century, when the government expropriated most Indian acreage. Since the eastern United States was the earliest densely settled region, colonization proceeded westward. Table 1 shows that the Indian peoples that bore the brunt of expropriation during each historical period were located in regions that supplied most new states during the same or the following period.

TABLE 1

States Admitted to the Union

Five-Year Intervals

Year	States
1790	Connecticut, Delaware, Georgia, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Virginia
1795	Kentucky, Vermont
1800	Tennessee
1805	Ohio
1810	none
1815	Louisiana
1820	Alabama, Illinois, Indiana, Maine, Mississippi
1825	Missouri
1830	none
1835	none
1840	Arkansas, Michigan
1845	Florida, Texas
1850	California, Iowa, Wisconsin
1855	none
1860	Minnesota, Oregon
1865	Kansas, Nevada, West Virginia
1870	Nebraska
1875	none
1880	Colorado
1885	none
1890	Idaho, Montana, N. Dakota, S. Dakota, Washington, Wyoming
1895	none
1900	Utah
1905	none
1910	Oklahoma
1915	Arizona, New Mexico
1980	Alaska, Hawaii

After the early 1900's, the continental United States had no more regions to colonize, and until 1950 there was correspondingly little expropriation of Indians. But as the preceding account shows, the closing of the frontier in the continental United States has not prevented the federal government from taking Indian lands. After 1950, expropriation has occurred primarily in Wisconsin, Oklahoma, South Dakota, Montana, Oregon, and California, where Indians have competed most keenly with private enterprise for range and timber.

Two main factors seem to have affected changes in the major policy measures used to expropriate Indians: Availability of relatively uncolonized territory and the source of demand for new land. Three major sources of demand appear in the preceding historical summary: small farmers, including impoverished subsistence farmers; land speculators, including merchants and railroads; and large machine industry, including lumber, oil, and mining companies as well as manufacturers. The first factor would determine the choice

between removing Indians and settling them on reduced tracts *in situ* (reservation, allotment, wholesale expropriation with tenancy, or some combination). The second factor would determine whether the government made the land available in large or small tracts, in a wholesale or piecemeal fashion, and by lease, sale, or grant.

The two factors work together to produce various policies. Without a large uncolonized region and with speculators dominating government policy, expropriation proceeded by reducing the holdings of certain Indian communities to reservations and offering the remainder at public sale in large tracts. This policy enhanced speculators' profits by allowing a small number of investors to monpolize lands opened up in any one area at any one time. Since removal was not feasible, policy allowed the Indians to retain some land *in situ*. Otherwise Indian occupants might have attacked the settlers whom the speculators were trying to attract. Speculators preferred that the remaining Indian lands exist in large tracts as reservations and large allotments to individuals because small allotments quickly moved into the land market, increased the supply, and lowered prices. This type of policy occurred between 1778 and 1810, by which time the Louisiana Purchase was made. The government established reservations again between 1850 and 1875, when settlers were colonizing the entire West, with the aid of United States army troops, and territories refused to accept Indian communities removed from neighboring states.

A different policy resulted when the influence of speculators combined with large areas of uncolonized territory. The uncolonized territory made removal feasible. Government policy combined removal with large allotments to individual traders, speculators, and "chiefs" who cooperated with the speculators, proceeding on a community to community basis. This description corresponds with the policy of the period, 1810–50, which began soon after the Louisiana Purchase and ended when the United States began to open for settlement all the other new territory it had acquired during the period. Logically, the government would sell land in large tracts. The size of the minimum purchase was large early in the period, although by 1834 it had been reduced greatly. The reduction may reflect Congress's increasing willingness to make concessions to the impoverished small settlers, especially in the bust part of the business cycle.

In the absence of uncolonized territory, policy resulted from small farmers gaining political influence relative to the speculators. They had interest in allotment of all Indian lands, preferring total expropriation, with the land being offered free or on easy terms in small tracts. They pressed the government and in response, Congress passed the Homestead Act of 1862 which reduced the minimum acreage of public land purchases. The effect of small farmers on land policy was strongest between 1875 and 1920. However, the influence of the speculators can still be seen in the 25-year trust provision of the Dawes Act and in Congress's failure to allot a number of reservations and in the disposal of a large proportion of "surplus" Indian lands at public sale rather than through the provisions of the Homestead Act.

Had uncolonized territory been available, small farmers would have favored removing the Indians, with the vacated tracts thrown open to homesteading or sale in small tracts on easy terms. Such a policy never existed. In reality, small farmers had little influence on Congress while there was uncolonized territory. Their influence came because, in the bust part of the business cycle, large numbers were ruined and formed a disgruntled mass pressing for an easy land policy.[2]

When industrial capital came to dominate federal policy, reservations were reduced and the alienated lands were allocated to the public domain. This policy provided industry with both cheap raw materials and a cheap rural labor force. Allocating resource-rich Indian lands to the public domain made the resources accessible under federal public lands leasing laws, which tend to be more liberal than those that apply to Indian lands as well as

public lands having no occupants to protest expropriation of the resources. In retaining corporate title to some lands, Indian governments had to have an economic base to support their communities. That base was often as a rural industrial reserve of laborers during periods of high unemployment. Large machine industry favored reservations as long as the Indian communities did not compete for either resources or labor when industry needed them. But when competition arose, the industrial interests advocated returning Indian lands to the public domain.

The influence of large machine industry first appeared during the period 1875-1920. Many reservations that had been left unallotted had timber and mineral resources which Executive Orders moved into the public domain. The influence of industrial capital on public land policy during this time is evident in such statutes as the Mineral Leasing Act and in Theodore Roosevelt's National Forest Program, which allowed corporations easy access to public lands.

Federal Indian land policy since 1920 also has conformed to the interests of large machine industry. During this period the federal government has increased its public land holdings as well and, since 1958 especially, their use by large private enterprises. From 1920 to 1945, Indian communities generally did not compete with industry for resources or labor, so that private industry had no reason to advocate more expropriation. In the 1920's Indian governments had no enterprises of their own. The Bureau used revenues from Indian resources to support agency operations, but these operations were not extensive.[3] Many Indian governments did not even exist as such until the Indian Reorganization Act of 1934. During the Depression, Indian governments were just beginning their economic development plans. Since 1945, however, the federal government has placed on the Indian governments increasing responsibility for various reservation social services. To finance growing Indian governmental bureaucracies and provide more benefits to their citizens, Indian governments have had to draw money from directly productive activities. Therefore, they have started their own enterprises, pushed for larger lease and royalty payments from on-reservation private enterprises, and imposed taxes on these businesses. Such competition has characterized the 1950's and 1970's particularly because of recessions. As a consequence, private enterprise has advocated termination, often with land allocated to the public domain.

The Alaska Native Claims Settlement Act, widely considered a creature of the oil companies, appears as an attempt to balance the two contradictory aims that industrial capital holds for Indian governments, that is, subsidizing a pool of cheap labor, yet not depriving private enterprise of cheap resources or of revenues. It provides for native corporations, each with a land base, but makes land title alienable and taxable in the long run.

What expropriation measures would large machine industry have favored had there been remaining uncolonized territory? Probably, industry would have supported the same combined reduced reservation and increased public domain policy outlined above, but with removal rather than termination to neutralize Indian governments that compete with private industry for resources. However, this situation did not occur in the United States because the availability of uncolonized territory kept ruined small farmers from forming the large urban proletariat necessary to foster large machine industry.[4]

The rate of expropriation of Indian lands varies with phases of the business cycle. However, whether the rate accelerates during the boom or the bust phase has varied historically.

Before 1875, the rate of expropriation of Indian lands seems to have accelerated during booms. Between 1818 and 1860 land booms peaked just before the beginning of busts and these peaks were due to rampant speculation. The areas of greatest speculation were also

areas recently opened to settlement in which the government had expropriated large tracts of Indian lands. For example, a major land boom in Alabama, Illinois, and Mississippi occurred in 1818 just before a major depression in 1819. The government obtained large cessions from the five southern nations and those of the old Northwest Territory after the War of 1812. Another major land boom that was especially pronounced in Mississippi, Michigan, and Arkansas in 1836 coincided with the Cherokee removal from Georgia and Arkansas and opening of Chickasaw lands in 1836. The boom preceded a bust in 1837. And in 1855, Wisconsin, Minnesota, and Iowa experienced a boom which also occurred strongly in other states. This coincides with the 1835–56 peak period of Indian treaty making and expropriation, which was focused on Indian communities in northern Minnesota, Iowa, Kansas, Nebraska, and California. Finally, a number of treaties negotiated in 1867–68 preceded a recession in 1869, and Congress ratified the last of these two years before the major depression of 1873–79.

The reason for this relationship is not hard to see. Land speculation is a form of investment and would naturally peak during a boom. Since most Indian lands during this period fell into the hands of speculators, it would be expected that Indian expropriation preceded the land boom by a short time.

However, between 1875 and 1920, periods of peak Indian expropriation seem roughly to coincide with busts. Table 2 shows the acreage alienated by various years between 1871 and 1972. Peak period for Indian expropriation occurred between 1881 and 1886 while depressions occurred in 1882 and 1887; 1887 and 1890 were major depression years and 1893, 1895, and 1899 were the worst years of a bad decade.

TABLE 2

Alienation of Indian Lands*
(Millions of Acres)

Period	*Change in Indian Holdings*	*Total at End of Period*	*Acreage Allotted*		*Trust Lands*	
			Acres	*% of Total*	*Acr.*	*% of Total*
1776–1858	−581.0	na	na	na	na	na
1853–56	−174.0	na	na	na	na	na
1856–71	na	122.0	10.2	8%	111.8	92%
1872–81	+33.6	155.6	16.6	11	139.0	89
1882–87	−19.2	136.4	17.0	12	119.4	88
1888–90	−32.1	104.3	17.8	17	86.5	83
1891–1900	−26.4	77.9	25.4	33	52.5	67
1901–11	−5.4	72.5	32.3	45	40.3	56
1912–20	−0.2	72.7	37.1	51	35.5	49
1921–29	−1.6	71.1	39.1	55	32.0	45
1930–33	−1.5	69.6	40.1	58	29.5	42
1948–52	−0.8	na	na	na	na	na
1953–57	−1.8	na	na	na	na	na
1933–60	+5.7	53.0	na	na	na	na
1960–72	−3.3	49.8	9.9	20	39.9	80

*Figures are from J. P. Kinney, *A Continent Lost, A Civilization Won* (1937, Baltimore: Johns Hopkins Press). Other sources: S. Lyman Tyler, *A History of Indian policy* (1973, Washington, D.C.: United States Government Printing Office) p. 74; William J. Brophy and Sophie D. Aberle, *The Indian: America's Unfinished Business* (1966, Norman: University of Oklahoma Press) p. 68; United States Department of Commerce (1976).

During the last period allotted lands also increased fastest, and grew only a little more slowly during the following decade, a sluggish one with troughs in 1902, 1907, and 1910. The Indian data unfortunately do not occur in time intervals short enough to show this relationship clearly, but the evidence is suggestive.

What would explain such a relationship? Most likely, it is rooted in the interaction of two factors: the ruination of small farmers that occurred from the late eighteenth century through the Depression, and the declining amount of arable public land available after 1850 and especially after the 1870's.

As agribusiness develops small semisubsistence farmers are ruined. The farms are too small to compete with the more efficient capitalized farms, and continuously go broke, especially during busts. The ruined farmers will colonize new land if possible. Otherwise they become tenants or join the urban work force. During a bust, therefore, the number of farmers looking for free land increases if there is land to colonize. But when land becomes scarce, farm tenancy increases and the urban work force grows. The latter development is necessary for the growth of large-scale machine industry.

This process occurred in the United States from the late eighteenth century to the early twentieth. The people who demanded western lands were impoverished small farmers. The poorest of these, unable to afford land, slaves, or equipment to start a commercial farm, would squat on the public domain or on Indian lands.[5] These squatters established subsistence farms. "It became common to see men after getting land, to maintain themselves the first year without further resources than a gun, a net and a few tools, living from these like the Indians and afterwards from their land."[6] And in the 1880's, according to an Osage official, "We only look out to the state of Kansas we see the whites who live on allotments and they have two ropes, one to lead their cow and one to stake out the calves."[7]

Throughout the period, the somewhat more prosperous farmers who arranged to buy land from speculators on credit often could not pay, particularly during depressions. They were forced off the land or into tenancy. However, as long as the amount of public land increased, colonization by squatting was possible for many. This situation existed until after 1850. Then the public domain shrank until 1930. Several significant events occurred during the 1850–1930 interval. Small farmers were ruined and farm tenancy increased; popular pressure grew for Congress to offer more free land, resulting in the 1862 Homestead Act and the populist movements in the Midwest during the late 1800's; and large-scale machine industry developed, especially in the Northeast where agribusiness was most advanced.[8] Pressure on Congress to open up more free land also encouraged the expropriation of Indians. By 1879, at the end of a six-year depression, there was hardly an Indian reservation that did not have squatters.

While pressure from small farmers on Congress to expropriate Indian lands increased during busts, pressure from the speculators—railroads, cattlemen, timber companies, and mining interests—did not increase. The cattlemen, during this period, favored retaining reservations from which they could lease large tracts.[9] Large timber and mining enterprises only wanted those reservation lands with exploitable resources transferred to the public domain.

This pattern did not persist during the Depression. Small farmers were wiped out on a grand scale and there was very little arable Indian land left to give them. Large-scale agribusiness, in the hands of financial institutions such as insurance companies, gobbled up and consolidated the holdings of the small farmers. The rapid increase in corporate concentration in the late 1920's gave large-scale machine industry even greater power than

before. These industries generally did not favor wholesale expropriation of Indian lands unless the Indian community competed with them for raw materials and profits.

Industrial capital draws upon rural labor during boom periods, when it expands geographically out of the urban centers where it concentrates during busts. But to serve as an industrial reserve work force, the rural population must be subsidized during busts. The federal policy of consolidating Indian lands, encouraging Indian governments to support members by developing livestock cooperatives and other revenue producing enterprises, and hiring Indians on the reservations, served this purpose. During the Depression, there were only the beginnings of such programs and little private enterprise on the reservations. Therefore, there was little pressure on Congress to expropriate Indian lands.[10]

However, once the Indian "economic development" programs got under way, they were bound to compete with industrial capital and agribusiness. Competition is especially severe during busts, when unemployed urban migrants return to the reservations and the demand for social services and Indian government jobs increase. Reservation unemployment is further increased as the manufacturing plants that moved in during boom times for the cheap labor move out again or go bankrupt. Then the Indian government must try to squeeze money out of industries with long-term resource leases through taxation, demands for increased lease and royalty payments, and profit sharing. Indian citizens of a reservation may also try to increase livestock production while unemployed, competing with outside ranchers who lease grazing land.[11]

Thus the termination policy of the 1950's and the 1970's revival of sentiment for termination in the West, can be seen as private enterprise's response to depression-induced competition with Indian communities. That Indian-managed reservation lands are necessary to support Indians as a rural industrial reserve work force may be seen in the failure of many states during the 1950's to advocate termination proceedings against Indian communities within their boundaries, because the states would have to pay for social services after termination.

CONCLUSION

Federal Indian land policy has evolved alongside the American economic system in the United States. Until the Civil War, the availability of relatively uncolonized territory maintained the dominance of small scale agricultural production and merchant capital. Indian lands provided profits to land speculators, some farmers, and merchants. As the supply of uncolonized territory decreased, small farms were no longer viable, and industrial capital grew at the expense of merchant capital. During this transition period, which lasted until 1920, Indian lands served the interests of both groups. Furthermore, expropriation of Indian lands together with the disposition of public lands, became an economic "stabilizer" in bust periods long before the federal government adopted Keynesian policies (boom and bust) officially. After 1920, the dominance of industrial capital in the United States economy was established. Indian lands continued to supply profits through cheap raw materials for the dominant capitalist interests, but in addition began to subsidize a rural industrial reserve army during busts. In this way they have continued their stabilizing function, but by subsidizing unemployed Indians rather than ruined non-Indian farmers.

If the above trend is perpetuated, continued depression will result in the attempted expropriation of Indian lands by bringing Indian governments into conflict with private enterprise over resources, while during prosperity, runaway shops (light industry) will continue to exploit cheap, subsidized Indian labor.

3. NOTES

1. The historical materials in this essay are taken from the following sources: David Aberle, "A Plan for Navajo Economic Development," in *Toward Economic Development for Native American Communities* (Vol. 1, Washington, D.C.: United States Government Printing Office, 1969); Edward B. Berger and William J. Mounce, "Applicability of State Conservation and other Laws to Indian and Public Lands," in *Rocky Mountain Mineral Law Institute*, (Vol. 16, 1971) pp. 347–97; William J. Brophy and Sophie D. Aberle, *The Indian: America's Unfinished Business* (Norman: University of Oklahoma Press, 1966); Vernon Carstensen, ed., *The Public Lands: Studies in the History of the Public Domain* (Madison: University of Wisconsin Press, 1963); Alfred N. Chandler, *Land Title Origins: A Tale of Force and Fraud* (New York: Robert Schalkenback Foundation, 1945); Marion Clawson, *The Federal Lands Since 1956: Recent Trends in Use and Management* (Baltimore: The Johns Hopkins Press, 1967); Clarence H. Danhof, "Farm-Making Costs and the 'Safety Valve' 1850–1860," in *The Journal of Political Economy* (Vol. 40, 1941), pp. 317–59; Angie Debo, *A History of the Indians of the United States* (Norman: University of Oklahoma Press, 1970); Gerald Forbes, "Oklahoma Oil and Indian Land Tenure," in *Agricultural History* (Vol. 15, 1941) pp. 189–94; Paul W. Gates, "Indian Allotments Preceding the Dawes Act," in John G. Clark, ed., *The Frontier Challenge: Responses to the Trans-Mississippi West* (Lawrence: University Press of Kansas, 1971); J. P. Kinney, *A Continent Lost—A Civilization Won: Indian Land Tenure in America* (Baltimore: Johns Hopkins Press, 1937); H. Craig Miner, *The Corporation and the Indian: Tribal Sovereignty and Industrial Civilization in Indian Territory 1865–1907* (Columbia: University of Missouri Press, 1976); D. S. Otis, "History of the Allotment Policy," in F. P. Prucha, ed., *The Dawes Act and the Allotment of Indian Lands* (Norman: University of Oklahoma Press, 1937); Loring Benson Priest, *Uncle Sam's Stepchildren: The Reformation of the United States Indian Policy, 1865–1887* (New York: Octagon Books, 1942); Kim G. Rogal, "Bad Days on the Reservation," in *The Nation* (November 20, 1976), pp. 525–30; Robert P. Swierenga, "Land Speculator 'Profits' Reconsidered: Central Iowa as a Test Case," in *Journal of Economic History* (Vol. 48, 1966) pp. 1–28; S. Lyman Tyler, *A History of Indian Policy* (Washington, D.C.: United States Government Printing Office, 1973); William E. Unrau and H. Craig Miner, *The End of Indian Kansas: A Study in Cultural Revolution, 1854–1871* (Lawrence: Regents Press of Kansas, 1978); United States Senate, *Survey of Conditions of the Indians of the United States:* Hearings Before a Subcommittee of the Committee on Indian Affairs (Part 1, Washington, D.C.: United States Government Printing Office, 1928–42; Imre Sutton, *Indian Land Tenure* (New York: Clearwater Publishers, 1975).

2. Allan G. Bogue, "To Shape a Western State: Some Dimensions of the Kansas Search for Capital, 1865–1893," in Clark, *The Frontier Challenge* (Lawrence: Regents of Kansas Press, 1971).

3. Testimony recorded in the United States Senate, Subcommittee of the Committee on Indian Affairs (1928–42) shows how the Bureau of Indian Affairs used revenues from tribal sources such as cattle, timber, and even the labor of school children, to support the agencies on many reservations.

4. Industrial capital may be the dominant political influence in other countries, such as some in Africa, that still have relatively uncolonized regions. These would be countries recently colonized under the aegis of industrial capital that developed historically in western Europe or the United States.

5. Chandler, *Land Title Origins*, p. 487.

6. Quoted in Chandler, *ibid.*

7. Quoted in Debo, *A History of the Indians of the United States*, p. 253.

8. Chandler, *Land Title Origins*, p. 488; Fred A. Shannon, "The Homestead Act and Labor Surplus," in *The American Historical Review* (Vol. 41, 1936) pp. 637–51.

9. C. L. Sonnichsen, *The Mescalero Apaches*, 2d ed. (Norman: University of Oklahoma Press, 1973). Albert Fall, who had a ranch at Three Rivers next to the Mescalero Apache Reservation in New Mexico tried for years to get Congress to declare the reservation a national park.

10. Some Sioux grazing lands were alienated during the Depression, but unlike ranchers in the arid West, where grazing land has few alternative uses, midwestern ranchers can grow grain on grazing lands, so they always can use the land. This situation encourages ownership rather than leasing.

11. The cattle price and production cycle peaked in 1956. The Bureau directive that encouraged sale of allotments within grazing units may have been a response to the demand of ranchers for more grazing land.

4

THE DARK AND BLOODY GROUND OF INDIAN WATER RIGHTS: CONFUSION ELEVATED TO PRINCIPLE*

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Nothing is more important to the future of America's Indian reservations than water, and no subject has been fraught with more confusion or been more bitterly contested than Indian water rights. This should come as no surprise to those familiar with the West, the region which is home to the vast majority of American Indians. There the monuments to the scarcity of water are evident for all to see—aqueducts, dams, and vast stretches of treeless and sometimes sandy terrain. These symbols reflect more than the present, for they also serve as historical reminders that Indians as well as non-Indians have had to adopt special techniques to tame the area west of the hundredth meridian. In this area, with the exception of the north Pacific Coast and isolated locations in the high mountains, water was (and is) in short supply, and thus farming and community building did not follow traditional patterns. But to focus only on the West is to obscure the national significance of the present crisis over Indian water rights and to ignore the role of the federal government in today's hotly contested battles—battles that have their origins in one of the darker labyrinths of American history.

That Indians view the current disputes over water as "life or death" struggles and a "survival issue" is easy to understand.[1] Fifty-five percent of the nation's 241 federal Indian reservations and nearly seventy-five percent of the country's 370,000 reservation Indians are in the arid and semiarid West where land without water is virtually valueless. These Indians possess special characteristics that are the envy of no one: lowest income in the nation, highest unemployment, highest suicide rate, least formal education, highest death rate from alcoholism.[2] Of course, there are tribes which are exceptionally well off—for example, the Mountain Utes with their oil and natural gas holdings and the Agua Caliente with their valuable real estate in Palm Spring, California—but such groups are distinctive because they are exceptions. Life on most reservations is bleak and often tragic at best, and informed observers agree that the situation is not going to improve significantly unless the economic and other conditions on reservations sharply improve. But it is axiomatic that the conditions on reservations in the arid West cannot improve significantly unless the Indians are guaranteed a sufficient supply of water. More than that, the capacity of Indians to survive as culturally distinct communities depends to a great extent on their success in obtaining a supply of water adequate enough to permit them to remain on their reservations.[3] And that has been the rub: What is an adequate supply of water, and how does the Indian justify his right to it? The purpose of this essay is to provide a measure of historical perspective for this question and the current disputes over Indian water rights,

*First published in *The Western Historical Quarterly* (Vol. IX, no. 4, October 1978) pp. 455–82. Reprinted with permission. Copyright retained by *Western Historical Quarterly*.

disputes in which the opponents invariably invoke history (or what they claim to be history) in their battles with one another. The focus will be on the major developments in what has come to be euphemistically known as Indian water law and on what appear to be the principal reasons for the patterns that have emerged.

The present water crisis involving the Indian, like virtually all other western water crises, is not a recent development. Its roots lie deep in the American past, a past that historians have unfortunately ignored in their eagerness to write about "massacres" and battles and other allegedly more colorful though often less significant events. To be sure, the lawyers have not neglected the subject, yet their attention—a by-product of the many legal clashes being generated over water rights and the tremendous fees being obtained—has proved a mixed blessing. While their observations, which can be found in scores of articles in a wide assortment of legal journals,[4] provide useful and sometimes imaginative commentaries on the law, their major evidence is invariably the writings of other lawyers and their approach usually that of the advocates they were trained to be. Thus, their articles often resemble legal briefs which marshall evidence favorable to their respective views while ignoring or failing to come to grips with contradictory evidence.

The contradictory evidence is imposing, for Indian water law is characterized by ambiguity and contentiousness on almost every point of significance, including the theoretical basis of the water right itself. The problem can perhaps best be understood in the context of its origins in the turmoil of the Indian wars and reservation policies of the late nineteenth century. The Indian wars of the 1860's, 70's, and 80's culminated in the army herding the vanquished natives onto reservations where they were to be "civilized." For most western Indians this meant being transformed from nomadic or seminomadic hunters into farmers and ranchers. The plan contained a fundamental flaw, however, for none of the treaties, executive orders, or congressional acts—the three major devices for creating reservations—said anything about the water needed to sustain the new way of life. Not even those Indians, like the Pueblo tribes of the Southwest, who had a centuries-old tradition of irrigation agriculture received assurances that their water supplies would be guaranteed to them in the future or allowed to increase as their population and needs grew. The federal government's actions reflected not only the East's unfamiliarity with the arid West but also the general public's rather straightforward attitude toward tribal Americans: Indians were an obstacle to settlement and "progress;" therefore, they had to be removed or at least restricted to a limited area. The future of the Indian counted for little at a time when many insecure non-Indians were worrying about their own futures in a hostile, water-shy environment. But this policy of segregation by reservation and avoidance of the water rights question merely postponed rather than prevented controversy, controversy which became inevitable as settlers moved west in ever larger numbers and began competing among themselves and with Indians for the limited water supply.

The non-Indians quickly devised a method for resolving conflicts among themselves, though their solution merely exacerbated relations with the Indians. The settlers agreed to abide by the principle of priority: first in time, first in right. Hammered out first in the gold fields of California and then given legal sanction by all the western states, this doctrine of prior appropriation, as it came to be called, reflected the harsh environment and the practical determination of the first settlers. It conferred title on the first persons taking water from a stream with the only stipulation being that they continue to use the water beneficially or lose their rights. Latecomers could establish claims of their own, but they could use water only if they did not interfere with the uses of the earlier arrivals.[5] In some instances the latecomers had rights so junior that they seldom, if ever, obtained water.

The doctrine of prior appropriation comported reasonably well with the ambitions of the pioneer settlers who knew what they wanted—mineral wealth, farms, and ranches—and

were determined to get it. But this was not true of most of the Indians. For them, the white man's way of life was to be embraced reluctantly, if at all. There were also special problems: new skills had to be learned, often from unenthusiastic and inexperienced teachers; a special new sense of individualism had to be acquired if the Indian was to compete successfully with the more materialistic and property-oriented white man; and funds for farm equipment and for the construction of irrigation ditches and dams had to be pried out of a parsimonious Congress and an insensitive bureaucracy. Obviously, the Indian was at a disadvantage in the race for water, but there were those who recognized this imbalance, sought to correct it, and in so doing contributed to a legal legacy that continues to influence the nation today.

The earliest and still most significant event in the development of Indian water rights occurred in Montana at the turn of the century. The incident warrants discussion in some detail not only because of its continuing fundamental importance, but also because it established a pattern repeated time and again whenever an issue involved Indian water rights arose.

At the heart of the Montana episode were the waters of the Milk River, a stream which rises in the Rocky Mountains, crosses into Canada, and then reenters the United States in north central Montana before eventually joining the Missouri River. By most conventional measures, the Milk is not an imposing stream—only about 730 miles in length and with an annual discharge that averages many times less than that of the Colorado River or the Rio Grande, which are modest rivers themselves. But in the semiarid High Plains country, the Milk was (and is) of vital importance. Especially interested in its waters were the 1,300 Gros Ventre and Assiniboine living on the Fort Belknap Indian Reservation, which had originally been part of a vast area set aside in 1855 and then reduced to 1,400 square miles in an agreement in 1888. According to that agreement, the Indians had been "desirous of disposing" of some of their lands "in order to obtain the means to enable them to become self-supporting, as a pastoral and agricultural people, and to educate their children in the paths of civilization." Those "means" included funds for "the purchase of mechanical implements" as well as funds for "assisting the Indians to build houses and enclose their farms, and in any other respect to promote their civilization, comfort, and improvement." Though the agreement said nothing specific about the water needed to support the anticipated agricultural and pastoral development, it established the Milk River, which was the Indians' principal dependable water supply, as the northern boundary of the reservation. Some 224 "chiefs, headmen, and principal men" of the Gros Ventre and Assiniboine tribes signed the agreement, which was also signed by three United States commissioners and then approved by Congress on May 1, 1888.[6]

The Indians of Fort Belknap unenthusiastically entered into the process of changing from nomadic hunters to sedentary ranchers and irrigation farmers, but by the early 1900's the resident superintendent was expressing considerable optimism about what the Indians had accomplished. "This spring," William R. Logan told the commissioner of Indian affairs in 1906, "a great deal of farming has been done. I should say at least twice as much as any other year I have been here . . . Every Indian, excepting the very old, have fair sized gardens, sufficient to furnish vegetables during the summer and the coming winter."[7]

But Logan's optimism was tempered by fear that these recent successes might be short lived. Ominous signs had been evident for some time, especially during the years following the completion of the Great Northern Railroad across Montana in the late 1880's. The arrival of the railroad and the appearance of new towns like Harlem, Chinook, and Havre had been accompanied by an influx of ranchers and farmers, many of whom fanned out along the Milk River upstream of the reservation and began diverting water to their fields. The presence of Indians downstream bothered the settlers not at all. They believed their

water uses predated most of those on the reservation and thus had the protection of the law of prior appropriation.

This atmosphere of tranquility quickly proved illusory. In 1904 and 1905 a severe drought combined with upstream diversions to dry up the Milk River before it reached the reservation. By June 1905 the situation at Fort Belknap was critical. "Our meadows are now rapidly parching up," Superintendent Logan told his superiors. "The Indians have planted large crops and a great deal of grain. All this will be lost unless some radical action is taken at once to make the settlers above the Reservation respect our rights." The issue was clear-cut: "To the Indians it either means good crops this fall, or starvation this winter."[8]

Logan's reputation as one of the best agents appointed by President Theodore Roosevelt assured his appeal careful consideration by Washington officials.[9] Persuaded of the urgency of the situation, the Justice Department quickly asked for a court order restraining Henry Winters and the other non-Indians from diverting water needed by the reservation. Specifically the department asked for 5,000 miner's inches of water that the non-Indians had been diverting, but it also registered a more encompassing claim: "all of the waters of the river are necessary for . . . purposes for which the reservation was created."[10] On June 26, 1905, the Ninth Federal Circuit Court issued the restraining order and thereby initiated three years of sharply contested court hearings. The dispute culminated in 1908 in the landmark U.S. Supreme Court decision of *Winters v. United States*.

No event ranks higher in importance in the history of Indian water rights than the Winters decision. It figures prominently in every discussion of the subject, and legal experts are agreed that it represents a kind of Magna Carta for the Indian. Still, its blessings have been mixed, for it has done as much to cloud the meaning and nature of the Indian water right as it has to assert that right's existence. On one point, however, the decision was unequivocally clear: the Indian had a water right that differed from all other kinds of water rights. It differed from the doctrine of prior appropriation; it differed from riparian law. "The Gros Ventre and other Indians establishing the Fort Belknap Reservation," declared the Court in its eight-to-one decision, are entitled to "a sufficient amount of water from the Milk River for irrigation purposes." And, added the Court, "the water of that river cannot be diverted, so as to prejudice this right of the Indians, by settlers on the public lands."[11] In other words, even if the non-Indian settlers had begun using most of the water first as they claimed, this would have made no difference; the Court simply abrogated Montana's law of prior appropriation. Nor would the Court have been bothered if the Indians had been using no water, for the Indian right did not depend upon use. The Indian water right, announced the Court, constituted a special right that had been "reserved" at the time Fort Belknap had been created, and it continued unimpaired whether the Indians used the water or not. Also not troubling to the Court was the fact that the agreement establishing the reservation said nothing about Indian water rights and was at best ambiguous on the subject. The Court merely observed that it was now a settled "rule" that in agreements with Indians "ambiguities . . . will be resolved from the standpoint of the Indian."[12] Besides, declared the Court, it would be foolish to assume that the Indians would have surrendered in the agreement something as precious as their water. "The lands were arid," noted the justices, "and, without irrigation, were practically valueless . . . The Indians had command of the land and the waters—command of all their beneficial use, whether kept for hunting, 'and grazing roving herds of stock,' or turned to agriculture and the arts of civilization. Did they give up all this? Did they reduce the area of their occupation and give up the waters which made it valuable or adequate?" The Court responded unequivocally in the negative, and in so doing established what has become known as the reserved rights doctrine, a major principal of U.S. constitutional law that now applies not

just to Indian reservations but to all federally reserved lands—national parks, monuments, forests, recreation areas, wildlife refuges, military reservations, and the like.[13]

Legal experts are agreed that the reserved rights doctrine is today the cornerstone of Indian water rights, but they are in wide disagreement over its larger meaning and impact. And that disagreement can be traced to the Winters decision itself. The Court, while holding that the Indian water right was a "reserved right," unfortunately failed to indicate clearly who had reserved it. The failure was significant, for it obscured the fundamental nature and extent of the right.

Actually, almost none of the scores of judges, attorneys, and legal scholars who have invoked the decision during the last three-quarters of a century have admitted to finding it unclear as to who reserved the water. Their standard approach has been either to ignore the issue or to attribute to the decision their own special meaning and almost invariably to do so without giving any indication that other, indeed contrary, views are possible. But a reading of their work reveals that most of them can be grouped into at least two competing camps—those who believe that the reserved rights doctrine rests on the principle that the Indians themselves reserved the water and those who contend that the doctrine rests on the principle that the federal government reserved the water for the Indians.[14] The difference between the two views is critically important, though the present unsettled state of the law makes it difficult to do more than to estimate that importance.

The principal characteristic of the first view is the assumption that the Indians were reserving something that was already theirs, in this instance a water right that extended back in time to prehistory, to that unrecorded point when the Indians first arrived and made the New World theirs. The Indian right would be similar to, indeed a part of, the long-recognized Indian "right of occupancy." The United States, as absolute territorial sovereign and the inheritor of European claims based on "discovery and conquest," held title in fee to all lands that were part of the public domain, including Indian lands. But the Indians by virtue of their prior presence possessed a so-called right of occupancy which only the national government could extinguish. Thus, the Indian water right, in the words of those who advocate this view, can be traced to "time immemorial" and is "prior and paramount" to the rights of all non-Indians.[15] Moreover, their rights would possess the character of a private property right protected by all the guarantees afforded private property in the U.S. Constitution. Then, too, if the Indians themselves had reserved the water, they would have retained all the potential beneficial uses of the water, not just those for agricultural or pastoral purpose.

To say that the practical implications of this position are far-reaching would be an understatement. The implications, quite simply, are staggering. According to a western state official,

> such a legal development would obligate the non-Indian economy of the western states to buy back from the various tribes owning such rights some or all of the water uses developed for municipal, industrial, commercial, agricultural, or other purposes, as soon as the respective tribes declare that the waters presently used in the non-Indian economy are necessary for Indian purposes. Thus, until such an Indian demand is made, non-Indian water rights would be clouded by the threat of a subsequent preemption under the 'prior and paramount' right of an Indian tribe. After such a demand was made, the non-Indian use could continue only at the sufferance of the tribe, which could in that situation rent or sell the use of water back to the non-Indian user, or take it from him and give it to another.[16]

On the other hand, if the second view is correct—that is, if the federal government reserved the water for the Indians—then the situation would be markedly different. First

off, the Indian right, according to the advocates of this position, would extend back in time only to the date when the federal government created the reservation. Thus the right of a reservation would be junior to the claims established by all early arriving non-Indians.[17] Moreover, some legal experts suspect that such a right, rather than constituting a personal property right, would attach only to the reservation and could not be severed from it. In essence, the United States would have reserved water to which it had title for lands to which it had title. The emphasis here would be on the rights of the United States rather than on the aboriginal rights of the Indians.

Which of the conflicting views did the Court advocate, or seem to advocate, in the Winters decision? Did the Indians themselves reserve the water or did the federal government reserve it for them? The answer seems to be that the Court advanced both theories and yet unequivocally endorsed neither. Put another way, the Court, despite the ease with which the warring camps of lawyers have insisted that the decision supports their view and no other, seems to have delivered a muddled opinion. The evidence is impressive. For example, there is no denying the fact that the Winters opinion contains statements that seem unmistakably to indicate that the Indians had reserved the water. The best illustration of this is that famous statement, part of which was quoted earlier and which warrants repeating at greater length:[18]

> The case, as we view it, turns on the agreement of May, 1888, resulting in the creation of Fort Belknap Reservation. . . . The reservation was a part of a very much larger tract which the Indians had the right to occupy and use and which was adequate for the habits and wants of a nomadic and uncivilized people. It was the policy of the Government, it was the desire of the Indians, to change those habits and to become a pastoral and civilized people. If they should become such the original tract was too extensive, but a smaller tract would be inadequate without a change of conditions. The lands were arid and without irrigation, were practically valueless. . . . The Indians had command of the lands and the waters—command of all their beneficial use, whether kept for hunting, 'and grazing roving herds of stock,' or turned to agriculture and the arts of civilization. Did they give up all this? Did they reduce the area of their occupation and give up the waters which made it valuable or adequate? . . . If it were possible to believe affirmative answers, we might also believe that the Indians were awed by the power of the Government or deceived by its negotiators. Neither view is possible. The Government is asserting the rights of the Indians. . . .

There is also other evidence which seems to indicate the Court believed the Indians were reserving the water. For example, among the authorities cited by the Court in *Winters v. United States* was a decision handed down three years earlier, *United States v. Winans*. That decision had involved Indian fishing rights, not water for irrigation, but it too had rested on an agreement in which the Indians themselves had allegedly "reserved [their] rights." "The treaty was not a grant of rights to the Indians," the Court stated, "but a grant of rights from them—a reservation of those not granted."[19] Even more telling to those advocating this position was the declaration made by one of the lower courts which had reviewed the Winters decision prior to its appeal to the Supreme Court. "When the Indians made the [1888] treaty . . . ," stated the Ninth Circuit Court of Appeals, "they reserved the right to use the waters of Milk river. . . ."[20]

Such statements seem rather clear until you turn to the argument of the attorneys and scholars who have read the decision differently. They emphasize other language, the most important of which occurs near the end of the Winters opinion when the Court attempted to explain why Montana water law did not apply to the Indians. It was not applicable,

declared the Court, because the federal government had abrogated the law. And the government had done so in the agreement of 1888 when it, not the Indians, had reserved the water: "The power of the Government to reserve the waters and exempt them from appropriation under the state laws is not denied, and could not be. . . . That the Government did reserve them we have decided. . . . This was done [in the agreement of] May 1, 1888. . . ."[21]

What we have here appears to be a contradictory or, at best, ambiguous decision. It is conceivable, of course, that the Court meant that in some way both the government and the Indians had reserved the water, but if so, the Court neglected to indicate this clearly or even to acknowledge the knotty legal implications of such a decision. Actually, it seems reasonable to conclude that the Court simply issued an opinion which, like many opinions before and since, was not clearly thought out and which restricted itself narrowly to the issue that it considered most pressing. The Court's primary desire was to assure the Fort Belknap Reservation of a water supply, and it did that. Since in this particular instance no non-Indians had a water right that antedated the created of the reservation, the question of whether the Indian right extended to "time immemorial" or merely to the date of the reservation's creation was of no practical importance. As to some of the other implications of the decision—for example, whether the Indian water right constituted a personal property right or merely inhered in the reservation itself—the Court had not been asked to clarify such questions and may not have been aware of them. At the turn of the century, even more so than today, there was great uncertainty about water rights, especially in that dimly lit corner of the law where federal and state prerogatives coincided. Add to this obscurity the centuries-old confusion about the status of Indians and you have the ingredients for a decision like *Winters v. United States*.

During the nearly three-quarters of a century since the Winters decision, little has been done to clarify the pressing and complex questions concerning the nature of Indian water rights. In 1963 there was an opportunity for the Supreme Court in its *Arizona v. California* decision to resolve some of the key issues. Among the disputed points before the Court on that occasion were the water rights of the five Indian reservations along the lower Colorado. Many people hoped the Court would at last clarify the uncertainty about the nature of Indian rights and settle the debate over whether those rights dated from "time immemorial" or from the establishment of a reservation. The Court did clarify some issues, but only partially so. The Court held that the water rights of the lower Colorado reservations extended back only to the dates when the reservations were created. In this instance, however, the impact of the decision was blunted by the fact that all five of the reservations had been established by either executive order or act of Congress. None had been created as Fort Belknap had—by agreement with the Indians. In other words, the reservations had been established by unilateral federal action, and there was thus no semblance of a treaty or agreement between sovereigns, an agreement in which the Indians themselves could have retained or "reserved" their rights. Instead, whatever right the Indians possessed, in the eyes of the Court, had been given to them (or reserved for them) by the federal government: "the United States did reserve the water rights for the Indians effective as of the time the Indian Reservations were created."[22]

The Court's decision, while not as far-reaching as many would have liked, was nonetheless significant. Of the three ways in which reservations had traditionally been established—by treaty, executive order, or act of Congress—the effect of two of them on Indian water rights had been clarified. Only the effect of treaties remained unclear, though this obscurity may not hide what some think it does since the Court said nothing to indicate the existence of a special treaty right. The Court was completely silent on the subject. This has led some observers to speculate that a future Court may decide that the

water rights of all reservations date only from the establishment of the reservations, regardless of the way a particular reservation was created. Those who suspect this may become law argue that any other view attaches undue historical significance to late nineteenth-century Indian treaties and attributes to the Indians "an intent which they were incapable of enforcing, then or now, without the active assistance of the United States."[23] On the other hand, such a view overlooks the fact that the same is true of many treaties negotiated between the United States and smaller countries around the world. It also forgets that the word "treaty" implies a special agreement between sovereigns, even if one of the sovereigns is a "domestic dependent" Indian nation, and this attitude runs contrary to the promise of the United States to honor all its agreements with Indians.[24] That the United States has not always done so is more a reflection on the character of the nation than on the nature of the treaty process. As Wilcomb Washburn has aptly observed: "That the solemn treaties of the United States proved ineffective first against the lawless white frontiersmen of the time and later against the forgetful successor governments of the United States is less a commentary on laws than it is on honor."[25] But questions of honor aside, the fact remains that the fundamental nature of the Indian water right remains obscured. And until it is clarified, neither Indians nor non-Indians can plan intelligently for the future.[26]

But other questions emerged during the years following the Winters decision, and they too came to possess major implications for Indians and non-Indians. One of the most critical involved the uncertainty over the specific quantity of an Indian water right and confusion over the purpose for which the water could legitimately be used. Here, as before, much of the confusion could be traced to the Winters decision. In one part of the decision, the justices had seemed to suggest that the Indians were entitled to the entire flow of the Milk River, this apparently being the amount reserved at the time of the reservation's creation. Elsewhere, however, the justices stated that the Indians possessed rights only to "a sufficient amount of water from the Milk River for irrigation purposes."[27] There was obviously a considerable difference between the two positions, one of them guaranteeing the Indians all the water and the other setting a limit on their uses. But even if one assumed, as most attorneys at the time and since have assumed, that a limit was set, the nature of that limit was far from clear. What exactly did the Court mean by "irrigation purposes"? Did it mean that the Indians were entitled to the amount of water needed to meet irrigation needs at the time of the reservation's creation? Or at the time of the Court's decision? Or was the decree open-ended and intended to guarantee the Indians additional water (or perhaps less water) as their population grew (or declined) and their agricultural needs along with it? If the answer were the latter, then did this not create an intolerable situation for non-Indians? How, for example, could they proceed to make costly investments to develop their lands if at any time the courts could deprive them of water and award it to a nearby reservation? On the other hand, if the amount of the Indian right was to be determined by irrigation needs (regardless of whether the needs were those as measured at some point in the past or future), did this not constitute an unjust restriction on the Indians? Should the Indians, for example, be required to use their water for irrigation when they might prefer to use it for such other "civilized" pursuits (and the alleged purpose of the reservation system was to "civilize" the Indians) as tourism, operating a nuclear power plant, mining, fishing, or any number of other activities? Still another unanswered but related question that emerged as the competition for water intensified in the later twentieth century was the Indians' right to groundwater: did the Indian right extend only to surface streams, or did it include the groundwaters that often determined the flow in steams? For example, could Indians prevent non-Indians from engaging in groundwater pumping that diminished the water supplies available to the

reservations? Another critical question that began reaching the courts in the 1920's and 30's involved the alienability of the Indian water right. Could the Indians sell or lease their right, or did the right exist only as an appurtenant to the reservation and only when an Indian exercised it?

For the most part, these questions still remain unanswered. The lower courts issued answers to some of them, but their answers were often in conflict, and Congress did nothing and the U.S. Supreme Court next to nothing to resolve the conflicts and uncertainties.[28] During the nearly three-quarters of a century since the Winters decision, the Supreme Court has dealt in a significant way with these questions only three times, and though its decisions have been of fundamental importance, it has skirted many critical issues.

The Supreme Court has responded not only seldom but also slowly. Following the Winters decision, the Court did not again discuss Indian water rights until 1939, more than three decades after the earlier decision. The new case was *United States v. Powers*, and on this occasion the Court restricted itself to the narrow—though nonetheless important—question of whether Indians could alienate their water rights. The case arose because some Crow Indians of Montana had sold to non-Indians the land allotments they had obtained under the Dawes Act and other legislation. When the new owners began diverting water to their land from streams on the Crow Reservation, they encountered opposition from the Justice Department, which claimed that the water could be used only by the tribe and not by individual Indian allottees or by others—Indians or non-Indians—who may have subsequently purchased the allotted land from the original Indian owners. The Supreme Court disagreed. When the "allotments of land were . . . conveyed in fee," declared the Court in January 1939, "the right to use some portion of the tribal waters essential for cultivation passed to the owners," who in turn were free to sell their rights to others.[29] The Court did little more than issue this statement. It affirmed but did not explain further the meaning of the Winters decision, and it expressly refused to consider the "extent or precise nature" of a water right purchased from Indians on the grounds that the "present proceeding is not properly framed to that end."[30]

Thus the Powers Court, like its predecessor in *Winters v. United States*, clarified the issue only to add new areas of confusion to those remaining. Water rights appurtenant to allotted land could be alienated, but the Court said nothing about the amount of water alienated or even how that amount could be determined. Nor did the Court indicate whether Indian water rights could be sold separately from the land or had to be used only on lands once part of a reservation. More importantly, the Court sidestepped completely the status of unallotted rights, that is, rights not yet given to any individual Indian but rather still held in common by all tribal members. Whether those rights could be sold or leased remained unclear, as did the jurisdiction of state law over any allotted rights that were alienated. Though one lower court had earlier held that a water right sold to a non-Indian became subject to state law, the Supreme Court neither affirmed nor rejected that decision.[31] Similar confusion remained about leased rights. Whether a non-Indian lessee was subject to state law or could use leased water on off-reservation projects remained moot questions.

Confusion over the transferability of Indian water rights has focused attention on other fundamental issues with implications that go far beyond specific questions of law. To prevent Indians from leasing or selling their water rights deprives them of ready access to much-needed income and may violate basic civil liberties, but permission to alienate the rights may produce equally harmful long-term results for the Indians. "It would not be too much of an exaggeration," warns law professor Monroe Price, "to say that the conversion of water rights to money is not altogether different from the transference of communally held

[Indian] land to money in the nineteenth century. The economic use of [the Indians'] unexploited assets makes sense but the corrosive effect on the future of the reservation may be substantial."[32]

Following the Powers decision, the Supreme Court did not again address itself to the many unanswered questions raised by the Winters case until nearly twenty-five years had passed. In 1963 in *Arizona* v. *California*, the Court, as already noted, determined the priority date of reservations established by executive order or act of Congress. In addition, the Court turned to the issue of how to determine the amount of an Indian water right. Its solution was the so-called "irrigable acreage" measure. The Court held that a reasonable measure for determining the Indian right was the "practicably irrigable acreage on the reservations." Such a standard, observed the Court, conformed to the government's intention in creating the reservations and could be applied with a fair degree of accuracy. Moreover, it represented a way of resolving the uncertainty of non-Indian about the extent of the Indian right. "How many Indians there will be and what their future needs will be can only be guessed," declared the Court. "We have concluded . . . that the only feasible and fair way by which reserved water for the reservations can be measured is irrigable acreage."[33] Thus, today the standard for determining the quantity of the Indian water right is the size and irrigable character of a reservation; it is not the number of Indians on a reservation or the wishes of those Indians about how a reservation should be developed.

Thirteen years later, in June 1976, the Supreme Court for the third time rendered a decision with important, though narrow, implications for Indian water rights. In *Cappaert* v. *United States*, the Court was originally concerned only with the groundwater rights of a U.S. national monument, but the decision was broadened to include all federally reserved lands. The Court held that the reserved right extended to groundwater as well as surface streams.[34]

But the decisions in *Cappaert* v. *United States*, *Arizona* v. *California*, and *United States* v. *Powers* are as significant for what they did not do as for what they did. None ended the uncertainty over whether there is a special treaty water right, or whether Indians can use their water for a purpose other than irrigation. The "irrigable acreage" standard might be a fair measure of the Indian right and a reasonable way of eliminating the uncertainties faced by non-Indians, but the Court failed to indicate whether Indians could use their water for purposes other than agriculture. Many legal experts believe they are under no such restriction, while others, including several powerful federal agencies, have on occasion argued to the contrary. The Pyramid Lake Paiutes of Nevada, for example, for years sought unsuccessfully to use their water to maintain the level of Pyramid Lake. Their reasons are easy to understand: they are by tradition a fishing people, and they wish to continue their economy and also to develop tourist facilities near the lake. The Department of the Interior has refused for years to allow them to use their water for anything but irrigation, and as support for its position cited a court decree grounded on the Winters decision. The Paiutes have now turned to the courts in an attempt to resolve this dispute in their favor.[35] Some Indians are also chalienging the fairness of the "irrigable acreage" standard as a measure for determining the quantity of the Indian right. There are tribes with few, if any, irrigable acres and others which have become interested in projects with rates of water consumption greater than those of agriculture. One such project is the nuclear power plant that several tribes wish to construct along the lower Colorado River.[36] Put simply, many Indians object to being subjected in the twentieth century to the rural ideals of the nineteenth century, especially when those ideals have been abandoned by the rest of the country. What the outcome of these challenges will be is far from clear.

Also a source of growing concern among Indians and non-Indians alike is the problem of water quality. The decline in water supply has led to conservation programs that have

created difficulties of their own. Waste of water is looked upon as a cardinal sin, and each acre-foot is used as many times as possible by farmers and cities before it is allowed to go downstream. Such intensification of use, combined with high rates of evaporation from reservoirs, has caused the pollution level (including the salt content that is in all natural water supplies) to rise dangerously. But the law is unclear as to whether the Indian (or anyone else for that matter) possesses a right to water of a particular quality. The most important precedent is not encouraging. For years the United States and Mexico have disagreed over the quality of the water allocated to Mexico in a treaty signed by the two countries in 1944. The treaty guaranteed Mexico a million and a half acre-feet of Colorado River water, but the agreement said nothing specific about the quality of the water. In the 1960's and early 1970's, Mexico received water that was heavily saline because of prior agricultural use and issued sharp protests to the United States, threatening to take the controversy to the World Court. Embarrassed by the publicity, the United States in 1973 agreed to build a desalination plant and to take other steps to improve the quality of the water reaching Mexico. In doing so, however, government spokesmen insisted that the United States was only acting out of comity and not because of legal obligations. Even so, the promised water quality projects remain uncompleted, and the government has indicated no willingness to help Indians or any others facing similar problems.[37]

The confused state of Indian water rights, both in the past and present, should now be readily apparent, but perhaps less clear are the reasons why. Certainly the fact that Indian water law has been case law, that is, court-produced law, is a major part of the explanation. Courts are notoriously slow to act, and when they do, the public can seldom know with certainty how far-reaching the decisions will be. The *Arizona v. California* decision, for example, made some significant law, but there are legal experts who think that law may apply only to the lower Colorado River.[38] Then, too, the courts, as the Winters case itself dramatically illustrates, can often be overly ambiguous, perhaps inept, in their written opinions.

Though the courts have sometimes created more problems than they have resolved, they have at least addressed the matter of Indian water rights. Congress, on the other hand, has refused—perhaps a more appropriate word is failed—to bring order and coherence to the confusion that is euphemistically known as Indian water law. That failure is not hard to understand. Congress responds, when it responds at all, to public pressure, and Indians constitute an infinitesimal fraction of the public, much less than one-half of 1 percent. Not surprisingly, their voices have seldom made a difference. Even when the law is clearly on their side, they have often failed to get needed congressional attention. For example, nearly a decade and a half have passed since the Supreme Court in *Arizona v. California* determined the rights of the tribes on the lower Colorado, but those tribes are today irrigating less than 8 percent (or only 10,764 acres) of the irrigable acreage on their reservations. Another 53 percent of the land is being irrigated by non-Indian leaseholders.[39] The major reasons for this situation are readily apparent: Indian poverty, non-Indian pressure, and congressional inaction. The Indians are financially unable to build the expensive irrigation projects themselves, and Congress has refused significant help because of pressure from non-Indians who oppose appropriations for Indian projects that could divert water from their lands to reservations. In some instances, Indians have obtained congressional support only by bargaining away some of their potential rights. For example, in 1957 the Navajo tribal council, in exchange for congressional authorization of the Navajo Indian Irrigation Project, agreed to waive its priority on the San Juan River and to share water shortages proportionately with non-Indians. About a decade later the Navajo entered into still another agreement which compromised their claims and has become the subject of especially sharp controversy. In exchange for the construction of a

power plant at Page, Arizona, and the jobs and revenue it would provide, the Navajo agreed to limit their demands to the water of the upper Colorado River to 50,000 acre-feet, only a fraction of the millions of acre-feet the tribe now desires. The limitation was for the life of the power plant (which is now in operation) or for fifty years, whichever ended first. Many Navajos are bitter about the agreement, claiming that the federal government failed to fully inform the tribal council about valuable potential rights it was surrendering.[40]

But the attitudes of Congress and the courts do not alone explain the present state of Indian water law. The executive branch has not vigorously sought a solution to the confusion, and the reasons for this are largely the same as those that explain Congress's inaction. In fact, the executive branch has occasionally sought to slow up the already tortuously slow judicial attempts to clarify Indian water law. For example, the Pyramid Lake Paiutes were for years prevented by the Interior and Justice departments from introducing a court suit to resolve how they could use their water.[41] In point of fact, the record of the executive branch—and the Department of the Interior in particular—is a classic example of conflict of interest where Indian water rights are concerned. The Bureau of Indian Affairs is within the Department of the Interior, but so too are the Bureau of Reclamation, the National Park Service, and the Bureau of Sport Fisheries and Wildlife. The United States has a trusteeship obligation to Indians, and it is the Bureau of Indian Affairs that is the agency most responsible for seeing that the government carries out its duties. But the other agencies within the Department of the Interior operate according to a different set of priorities and have advocated projects that sometimes threaten Indian water rights. Conflicts among the agencies are resolved by the secretary of the interior, a political appointee who in the past has usually decided not to alienate the non-Indian voters and congressmen.[42] These decisions have often been facilitated by the availability of greater technical expertise in other agencies—especially the Bureau of Reclamation—than in the Bureau of Indian Affairs.[43]

Today the need to clarify the confusion surrounding Indian water rights seems obvious, but the immediate prospects for such clarification appear dim. The creation in 1971 of a special Indian Water Rights Office within the Department of the Interior has not appreciably improved the situation. Another measure of the current mood has been the federal government's refusal to implement the National Water Commission's recommendations. Established in 1968 and directed by Congress to "review present and anticipated water resource problems," the commission issued a report in June 1973 which gave careful consideration to Indian water rights. Among its recommendations was a request that Congress take steps "to define and quantify Indian water rights" and to provide compensation, in the form of cash or additional water supplies, to non-Indians harmed by this action.[44] Nothing has come of those recommendations, though the government from time to time continues to reaffirm the "very serious" nature of the Indian water rights question and to acknowledge that the resolution of the problem "is essential to rational planning for the future."[45] The Indians naturally share this sentiment, but they are disheartened by the inaction and fearful that the larger society will devise ways to separate them from their water rights just as it has already separated them from most of their land. A recent and special reason for concern among Indians was the 1976 Supreme Court decision which held that state courts, not just federal courts as the National Water Commission would have preferred, can adjudicate Indian water rights.[46] State courts have traditionally been unsympathetic to Indian claims.[47]

An equitable solution to the present confusion in the law will not be easy, the more so because that confusion has been longstanding and has virtually taken on the character of a principle of Indian water law. But even clarification of the law will not ameliorate the

situation unless other long-term and related problems are addressed—for example, the insufficient number of Indians possessing the technical and managerial skills needed to guide reservation development, the nightmare created by fractionated ownership of land on many reservations, and the reluctance of Congress and others to provide needed capital.[48] Still, the legal confusion represents a fundamental obstacle to the improvement of reservation conditions, improvement that could permit Indians to remain on their lands and survive as a community rather than as refugees in cities to which many are now being forced to flee and where they are apt to lose their cultural heritage.

The present situation with its doubts and anxieties is serving well neither Indian nor non-Indian. The challenge to the courts, to Congress, to the executive branch, and to all Americans is largely what it was when the issue of Indian water rights was first raised: to find a way of replacing confused law—which essentially is no law at all—with clear and reasonable principles. The challenge, in short, is to replace confusion with equity.

4. NOTES

1. U.S., Congress, Senate, Committee on Interior and Insular Affairs, Subcommittee on Indian Affairs, *Hearings on Indian Water Rights*, 93 Cong., 2 sess. (1974); U.S., Congress, Senate, Committee on the Judiciary, Subcommittee on Administrative Practice and Procedure, *Hearings on Federal Protection of Indian Resources*, 92 Cong., 1 sess. (1971); Rupert Costo, "Indian Water Rights: A Survival Issue," *Indian Historian*, V (Fall 1972), 4–6; William H. Veeder, "Water Rights: Life or Death for the American Indian," *Indian Historian*, V (Summer 1972), 4–9; Rosalie Martone, "The United States and the Betrayal of Indian Water Rights," *Indian Historian*, VII (Summer 1974), 3–11; *Indian Voices: The Native American Today* (San Francisco, 1974); Steven Nickeson, "The Indian Water Wars," *Race Relations Reporter*, V (no. 9, 1974), 12–17.

2. U.S., Department of Commerce, *Federal and State Indian Reservations and Indian Trust Areas* (Washington, D.C., 1974); U.S., Department of Health, Education, and Welfare, *A Study of Selected Socio-Economic Characteristics of Ethnic Minorities Based on the 1970 Census*, vol. 3: *American Indians* (Washington, D.C., 1974); U.S., Department of Health, Education, and Welfare, *A Study of Selected Estimates of Resident Indian Population and Labor Status by State and Reservation: March 1973* (Washington, D.C., June 1973), 3–5; U.S., Bureau of the Census, *Current Population Reports: Population Characteristics—Persons of Spanish Origin in the United States: March 1973* (Washington, D.C., May 1974), 24; U.S., Bureau of the Census, *Current Population Reports: The Social and Economic Status of the Black Population in the United States, 1973* (Washington, D.C., July 1974), 46; U.S., Bureau of Labor Statistics, *Handbook of Labor Statistics, 1974* (Washington, D.C., 1974), 144; U.S., National Institute of Mental Health, *Suicide, Homicide, and Alcoholism among American Indians: Guidelines for Help* (Washington, D.C., 1973), 4, 26; U.S., Department of Health, Education, and Welfare, *Vital Statistics of the United States, 1972*, vol. 2: *Mortality, Part A* (Rockville, Maryland, 1976), 1–89, 1–180–1–181, 1–184–1–185; U.S., Bureau of the Census, *Census of Population, 1970: Subject Reports—American Indians* (Washington, D.C., June 1973), vii, ix, 120, 141–143, App–12; U.S., Bureau of the Census, *Census of Population, 1970: Detailed Characteristics—United States Summary* (Washington, D.C., February 1973), 1–627 through 1–629, 1–1641, 1–1643 through 1–1646, and App–25.

3. See, for example, U.S. Commission on Civil Rights, *The Southwest Indian Report* (Washington, D.C., May 1973), 130–31; U.S. Congress, Joint Economic Committee, "Toward Economic Development for Native American Communities," *Joint Committee Print*, 91 Cong., 1 sess. (1969); James P. Merchant and David M. Dornbusch, *The Importance of Water Supply to Indian Economic Development* (Prepared for the Office of Water Research and Technology, U.S. Department of the Interior, 1977).

4. For a sampling of the extensive legal literature, see Robert D. Dellwo, "Indian Water Rights—The Winters Doctrine Updated," *Gonzaga Law Review*, VI (Spring 1971), 215–40; Bill Leaphart, "Sale and Lease of Indian Water Rights," *Montana Law Review*, XXXIII (Summer 1972), 266–76; Paul Bloom, "Indian 'Paramount' Rights to Water Use," *Rocky Mountain Mineral Law Institute Proceedings*, XVI (1971), 869–93; Edward W. Clyde, "Indian Water Rights," in Robert Emmet Clark, ed., *Waters and Water Rights*, 7 vols. (Indianapolis, 1967–76), II, 373–99; Gerald R. Miller, "Indians, Water and the Arid Western States—A Prelude to the Pelton Decision," *Utah Law Review*, V (Fall 1957), 495–510; John Patterson, "Extent of Indian Water Rights on Reservations in the West," *Rocky Mountain Law Review*, XVIII (1946), 427–30; Harold A. Ranquist, "The 'Winter's [*sic*] Doctrine' and How It Grew" (Reno: U.S., Department of the Interior, Office of the Solicitor, typescript, February

1975); Ranquist, "The Winters Doctrine and How It Grew: Federal Reservation of Rights to the Use of Water," *Brigham Young University Law Review* (no. 3, 1975), 639–724; Ranquist, "The Effect of Changes in Place and Nature of Use of Indian Rights to Water Reserved under the 'Winters Doctrine,'" *Natural Resources Lawyer*, V (January 1972), 34–41; Robert S. Pelcyger, "Indian Water Rights: Some Emerging Frontiers," *Rocky Mountain Mineral Law Institute Proceedings*, XXI (1975), 743–75; Michael C. Nelson and Bradley L. Cooke, "The Winters Doctrine: Seventy Years of 'Reserved' Water Rights to Indian Reservations," *University of Arizona Arid Lands Resource Information* Paper No. 9 (Tucson, 1977); David R. Warner, "Federal Reserved Water Rights and Their Relationship to Appropriative Rights in the Western States," *Rocky Mountain Mineral Law Institute Proceedings*, XV (1969), 399–420; Harry B. Sondheim and John R. Alexander, "Federal Indian Water Rights: A Retrogression to Quasi-Riparianism?" *Southern California Law Review*, XXXIV (Fall 1960), 1–61; "Federal Water Rights Legislation and the Reserved Indian Lands Controversy," *Georgetown Law Journal*, LIII (Spring 1965), 750–91; Monroe E. Price, *Law and the American Indian: Readings, Notes and Cases* (Indianapolis, 1973), 310–29; Monroe E. Price and Gary D. Weatherford, "Indian Water Rights in Theory and Practice: Navajo Experience in the Colorado River Basin," *Law and Contemporary Problems*, XL (Winter 1976), 97–131; Susan Millington Campbell, "A Proposal for the Quantification of Reserved Indian Water Rights," *Columbia Law Review*, LXXIV (November 1974), 1299–321; Michael M. Hickey, "Application of the Winters Doctrine: Quantification of the Madison Formation," *South Dakota Law Review*, XXI (1976), 144–59; Robert H. Abrams, "Implied Reservation of Water Rights in the Aftermath of *Cappaert v. United States*," *Environmental Law Reporter*, V (1977), 50043–55; William H. Veeder, "Indian Prior and Paramount Rights to the Use of Water," *Rocky Mountain Mineral Law Institute Proceedings*, XVI (1971), 631–68; Veeder, "Indian Water Rights in the Upper Missouri River Basin," *North Dakota Law Review*, XLVIII (Summer 1972), 617–37; Veeder, "Indian Prior and Paramount Rights versus State Rights," *North Dakota Law Review*, LI (Fall 1974), 107–36; Veeder, "Winters Doctrine Rights—Keystone of National Programs for Western Land and Water Conservation and Utilization," *Montana Law Review*, XXVI (Spring 1965), 149–72; Veeder, "The Pelton Decision: A Symbol—A Guaranty That the Development and Conservation of Our Nation's Resources Will Keep Pace with Our National Demands," *Montana Law Review*, XXVII (Fall 1965), 27–45; Veeder, "Water Rights in the Coal Fields of the Yellowstone River Basin," *Law and Contemporary Problems*, XL (Winter 1976), 77–96; Veeder, "Confiscation of Indian Winters Rights in the Upper Missouri Basin," *South Dakota Law Review*, XXI (Spring 1976), 282–309.

Historians have virtually ignored the subject of Indian water rights. The few exceptions worth noting are William B. Taylor, "Land and Water Rights in the Vice-royalty of New Spain," *New Mexico Historical Review*, L (July 1975), 189–212; Richard E. Greenleaf, "Land and Water in Mexico and New Mexico, 1700–1821," *New Mexico Historical Review*, XLVII (April 1972), 85–112; Sue Abbey Chamberlain, "The Fort McDowell Indian Reservation: Water Rights and Indian Removal, 1910–1930," *Journal of the West*, XIV (October 1975), 27–34; Terrence J. Lamb, "Indian-Government Relations on Water Utilization in the Salt and Gila River Valleys of Southern Arizona, 1902–1914," *Indian Historian*, X (Summer 1977), 38–45. But see also the article by anthropologist Alfonso Ortiz, "The Gila River Piman Water Problem: An Ethnohistorical Account," in Albert H. Schroeder, ed., *The Changing Ways of Southwestern Indians: A Historic Perspective* (Glorieta, New Mexico, 1973), 245–57.

5. Because some western states possessed both humid and arid regions within their borders, they adopted legislation that recognized riparian law as well as the doctrine of prior appropriation. For a full discussion, see Clesson S. Kinney, *A Treatise on the Law of Irrigation and Water Rights and the Arid Region Doctrine of Appropriation of Waters* (2d ed., 4 vols., San Francisco, 1912); and Samuel C. Wiel, *Water Rights in the Western States* (3d ed., 2 vols., San Francisco, 1911). A brief analysis can be found in Norris Hundley, jr., *Water and the West* (Berkeley and Los Angeles, 1975), 64–73.

6. *U.S., Statutes at Large*, XXV, 113–33 (1888). For earlier actions affecting the reservation's boundaries, see *ibid.*, XI, 657 (1855); XVIII, 28 (1874).

7. William R. Logan to Francis E. Leupp, April 29, 1906, Fort Belknap Indian Agency Papers, Box 20, Records of the Bureau of Indian Affairs, Record Group 75, Federal Archives and Records Center (Seattle, Washington). See also Logan to Cyrus C. Babb, November 7, 1905, Box 57, *ibid.*

8. Logan to Leupp, June 3, 1905, file 58730, Records of the Department of Justice, Record Group 60, National Archives. An examination of the Fort Belknap tribal archives in Montana turned up no relevant documents dealing with these developments.

9. E. A. Hitchcock to U.S. attorney general, June 13, 1905, *ibid.* For a discussion of William Logan's tenure at Fort Belknap, see Edward E. Barry, Jr. *The Fort Belknap Indian Reservation: The First Hundred Years, 1855–1955* (Bozeman, Montana, xerox, 1974), chap. 4

10. *Winters v. United States*, 207 U.S. 567 (1908), 143 F. 741 (1906); "United States v. Mose Anderson et al.: Temporary Restraining Order" (9th Cir., June 26, 1905), Ninth Circuit Court of Appeals Papers, Box 6659, District Courts Records, Record Group 21, Federal Archives and Records

Center (Seattle, Washington), Carl Rasch to Logan, July 8, 1905, Box 52, Fort Belknap Indian Agency Papers, RG 75.

11. *Winters v. United States*, 207 U.S. 564 (1908).

12. *Ibid.*, 576.

13. See, for example, Walter Kiechel, Jr., "Inventory and Quantification of Federal Water Rights—A Common Denominator of Proposals for Change," *Natural Resources Lawyer*, VIII (no. 2 1975), 255–61; David S. Bradshaw, "Water in the Woods: The Reserved-Rights Doctrine and National Forest Lands," *Stanford Law Review*, XX (June 1968), 1187–204; Warner, "Federal Reserved Water Rights and Their Relationship to Appropriative Rights in the Western States," 399–420; Richard A. Hillhouse, "The Federal Reserved Water Doctrine—Application to the Problem of Water for Oil Shale Development," *Land and Water Law Review*, III (no. 1 1968), 75–102. Aspects of the reserved rights doctrine can be discerned as dictum in an 1899 decision. See *United States v. Rio Grande Dam and Irrigation Co.*, 174 U.S. 690, 703 (1899). Raphael J. Moses traces the roots of the reserved rights doctrine to the Homestead Act of 1866. See his "The Federal Reserved Rights Doctrine from 1866 through *Eagle County*," *Natural Resources Lawyer*, VIII (no. 2 1975), 226.

14. See, for example, Sondheim and Alexander, "Federal Indian Water Rights," 18–19; Patterson, "Extent of Indian Water Rights on Reservations in the West," 427–28; Leaphart, "Sale and Lease of Indian Water Rights," 266–67; Hickey, "Application of the Winters Doctrine," 145–46; Charles J. Meyers, "The Colorado River," *Stanford Law Review*, XIX (November 1967), 65–70; Clyde, "Indian Water Rights—The Winters Doctrine Updated," 222; Kiechel, "Inventory and Quantification of Federal Water Rights," 256; Miller, "Indians, Water, and the Arid Western States," 501–2; Clark, "Water Rights Problems in the Upper Rio Grande Watershed and Adjoining Areas," *Natural Resources Journal*, XI (January 1971), 65; "Federal Water Rights Legislation and the Reserved Lands Controversy," 762–63; Veeder, "Indian Water Rights in the Upper Missouri River Basin," 617–26; Veeder, "Water Rights in the Coal Fields of the Yellowstone River Basin," 87–88; Veeder, "Winters Doctrine Rights—Keystone of National Programs," 150–55, 160; Veeder, "Confiscation of Indian Winters Rights," 283, 288–89; Hillhouse, "The Federal Reserved Water Doctrine," 81–82; Campbell, "A Proposal for the Quantification of Reserved Indian Water Rights," 1302–3; Abbott Goldbert, "Interposition—Wild West Water Style," *Stanford Law Review*, XVII (November 1964), 19–20; Elizabeth McCallister, "Water Rights: The McCarren [sic] Amendment and Indian Tribes' Reserved Water Rights," *American Indian Law Review*, IV (no. 2 1976), 303; Price and Weatherford, "Indian Water Rights in Theory and Practice," 102; Price, *Law and the American Indian*, 316–17; G. A. Wilkinson, "Indian Control and Use of Water for Mineral Development," in *Rocky Mountain Law Foundation, Institute of Indian Land Development: Oil, Gas, and Other Minerals* (Denver, 1976), 1–23; Warner, "Federal Reserved Water Rights and Their Relationship to Appropriative Rights in the Western States," 404; Abrams, "Implied Reservation of Water Rights," 50043; Pelcyger, "Indian Water Rights," 752–53n; Robert E. Beck and John C. Hart, "The Nature and Extent of Rights in Water in North Dakota," *North Dakota Law Review*, LI (1974), 302; Timothy O. Beppler, "Water Law Procedural Inconsistencies and Substantive Issues in the Federal Reserved Water Rights Doctrine," *Land and Water Law Review*, X (no. 2 1975), 478; Kenneth E. Foster, "The Winters Doctrine: Historical Perspective and Future Applications of Reserved Water Rights in Arizona," *Ground Water*, XVI (1978), 186–88; John A. Carver, Jr., "A Federal Policy for Development of Western Water," *Rocky Mountain Mineral Law Institute Proceedings*, XIV (1968), 476; and Ranquist, "The Effect of Changes in Place and Nature of Use of Indian Rights to Water," 34–35n. Ranquist, in "The Winters Doctrine and How It Grew," acknowledges that "Some courts and commentators . . . have posited that it was the Indians and not the United States who reserved the water" (654), but he is not sympathetic to this view and does not explain why others hold it. Two noteworthy exceptions in the literature are the side-by-side articles published by William H. Veeder and Paul Bloom in 1971 in the *Rocky Mountain Mineral Law Institute Proceedings*. Veeder and Bloom are in sharp disagreement in their interpreation of the Winters decision, but they unfortunately tend to assert, rather than to demonstrate, the soundness of their positions. Veeder, "Indian Prior and Paramount Rights to the Use of Water," 631–68; Bloom, "Indian 'Paramount' Rights to Water Use," 669–93. Clyde, "Special Considerations Involving Indian Rights," *Natural Resources Lawyer*, VIII (no. 2 1975), 237–52, acknowledges the disagreement between Veeder and Bloom, but unlike either of them, argues unpersuasively that it makes little difference who reserved the water (243–44). Among the few who acknowledge (but do little more) that the Winters decision is ambiguous as to who reserved the water are Clark, ed., *Water and Water Rights*, II, 59–61; Rebecca E. Wardlaw, "The Irrigable Acres Doctrine," *Natural Resources Journal*, XV (April 1975), 375–76; Merchant and Dornbusch, *Importance of Water Supply*, 37–38, 40; Nelson and Booke, "The Winters Doctrine," 7–8, 11–12, but see 41; Ronald T. L. Young, "Interagency Conflicts of Interests: The Peril to Indian Water Rights," *Law and the Social Order* (no. 2 1972), 315n; and Eva H. Morreale, "Federal-State Conflicts over Western Waters—A Decade of Attempted 'Clarifying' Legislation," *Rutgers Law Review*, XX (Spring 1966), 434–35.

Like most of the attorneys and legal scholars, the judges have read their own theories into the Winters decision. For cases which support the notion that the federal government reserved the water, see *Conrad v. United States*, 161 F. 829 (9th Cir. 1908); *Arizona v. California*, 373 U.S. 546 (1963). For cases which indicate that the Indians reserved the water, see *Skeem v. United States*, 273 F. 93 (9th Cir. 1921); *United States v. Powers*, 94 F.2d 783 (9th Cir. 1938); *United States v. Ahtanum*, 236 F.2d 321 (9th Cir. 1956).

15. The most outspoken proponent of this point of view is William H. Veeder, a graduate of the University of Montana School of Law and an official for many years with the Department of Justice and the Bureau of Indian Affairs. Among his numerous writings, see especially his articles cited in footnote 4 as well as his "Abridgment and Loss of Indians' Winters Doctrines Rights and Those of the Nation as a Whole," in U.S., Congress, Senate, Committee on the Judiciary, Subcommittee on Administrative Practice and Procedure, *Hearings on Federal Protection of Indian Resources*, 92 Cong., 1 sess. (1972), 353–78; "Federal Encroachment on Indian Water Rights and the Impairment of Reservation Development," in U.S., Congress, Joint Economic Committee, "Toward Economic Development for Native American Communities," *Joint Committee Print*, 91 Cong., 1 sess. (1969), 460–518; "Arizona v. California et al.: Memorandum of Points and Authorities Supported by Affidavits Disclosing . . . Conflicts of Interests in the Department of Justice . . ." (n.p., xerox, August 13, 1975). See also Daniel H. Macmeekin, "The Navajo Tribe's Water Rights in the Colorado River Basin," in U.S., Congress, Senate, Committee on the Judiciary, Subcommittee on Administrative Practice and Procedure, *Hearings on Federal Protection of Indian Resources*, 92 Cong., 1 sess. (1972), 766–67; Kinney, *A Treatise on the Law of Irrigation and Water Rights*, I, 675–84. For a discussion of the Indian rights of occupancy and the authority of the national government, see *Johnson v. McIntosh*, 8 Wheaton 543 (1823); Kinney, *A Treatise on the Law of Irrigation and Water Rights*, I, 676, 679–85, 700–701; Daniel G. Kelly, Jr., "Indian Title: The Rights of American Natives in Lands They Have Occupied Since Time Immemorial," *Columbia Law Review*, LXXV (1975), 655–86.

16. Bloom, "Indian 'Paramount' Rights to Water Use," 689–90.

17. See, for example, *ibid.*, 689–93; Macmeekin, "The Navajo Tribe's Water Rights," 767; Sondheim and Alexander, "Federal Indian Water Rights," 18–19, passim.

18. *Winters v. United States*, 207 U.S. 575–78 (1908).

19. *United States v. Winans*, 198 U.S. 381 (1905); cf. *Winters v. United States*, 207 U.S. 577 (1908).

20. *Winters v. United States*, 143 F. 749 (9th Cir. 1906). Technically the 1888 agreement was not a treaty since it had been negotiated seventeen years after Congress had abandoned the treaty system. Nonetheless, the Ninth Circuit Court of Appeals repeatedly referred to it as a treaty, and the Supreme Court, while not using that word, discussed the agreement as if it were a legally binding treaty. The courts have held that similar agreements—for example, the Great Sioux Agreement of 1889—are "legally binding in much the same way that earlier treaties are still binding." Wilcomb E. Washburn, *The Indian in America* (New York, 1975), 103; Vine Deloira, Jr., ed., *Of Utmost Good Faith* (San Francisco, 1971), 52, 63.

21. *Winters v. United States*, 207 U.S. 577 (1908).

22. *Arizona v. California*, 373 U.S. 600 (1963).

23. Ranquist, "The *Winters* Doctrine and How It Grew," 654n.

24. *U.S., Statutes at Large*, XVI, 566 (1871).

25. Wilcomb E. Washburn, *Red Man's Land/White Man's Law: A Study of the Past and Present Status of the American Indian* (New York, 1971), 58. Some commentators seem to believe that insistence on a special treaty right somehow undermines the position of those Indians whose reservations were created by means other than treaty. See, for example, Ranquist, "The *Winters* Doctrine and How It Grew," 654. Whatever its merits, this position appears to have been effectively quashed by the Supreme Court's finding in *Arizona v. California* that reservations created by executive order or act of Congress possess reserved water rights.

26. The Pueblo Indians of the Southwest present a special problem since their lands were not set aside by treaty, statute, or executive order. In 1976 the Tenth Circuit Court, in *New Mexico v. Aamodt*, held that the Pueblo tribe possess a water right similar to that of other Indians, but the court did not attempt to clarify the ambiguities of that right or to specify the right's date of priority—"time immemorial," or that point when Spain or Mexico acknowledged a Pueblo tribe's right, or 1848 when the United States acquired the Southwest from Mexico in the Treaty of Guadalupe Hidalgo, or 1858 when the United States affirmed Pueblo land titles, or some other date. *New Mexico v. Aamodt*, 537 F.2d 1102 (10th Cir. 1976); see also Nickeson, "Pueblo Water: The More Things Change, the More They Stay the Same," *Race Relations Reporter*, V (July 1974), 13–19; see also Taylor, "Land and Water Rights in the Viceroyalty of New Spain," 189–212; and Greenleaf, "Land and Water in Mexico and New Mexico," 85–112. There is a wealth of material in the National Archives on Pueblo water rights problems.

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27. *Winters v. United States*, 207 U.S. 564, 567, 576–77 (1908).

28. For example, in 1908 the Ninth Circuit Court of Appeals held that the Indians were entitled to enough water to satisfy present and future needs. The decree was open-ended, permitting modification of the water right "should the conditions on the reservation at any time require such modification." In 1939, however, this same court rejected the open-ended decree and permanently fixed the rights of an Indian reservation. Then, in 1956, the Ninth Circuit again reversed itself and returned to the open-ended decree. *Conrad v. United States*, 161 F. 829, 835 (9th Cir. 1908); *United States v. Walter River Irrigation District*, 104 F.2d 334 (9th Cir. 1939); *United States v. Ahtanum Irrigation District*, 236 F.2d 321, 327 (9th Cir. 1956), 330 F.2d 897 (9th Cir. 1964).

29. *United States v. Powers*, 305 U.S. 527, 532 (1939), 16 F. Supp. 155 (1936). The Supreme Court was here agreeing with the earlier lower court decisions in *Skeem v. United States*, 273 F. 93 (9th Cir. 1921); and *United States v. Hibner*, 27 F.2d 909 (9th Cir. 1928).

30. *United States v. Powers*, 305 U.S. 533 (1939).

31. *United States v. Hibner*, 27 F.2d 909, 912 (9th Cir. 1928). This same lower court also held that the amount of transferred water right was the amount being used at the time of the transfer plus the amount that the new owner could put to use "with reasonable diligence." *Ibid.*

32. Price, *Law and the American Indian*, 323.

33. *Arizona v. California*, 373 U.S. 600–601 (1983). For a critique of the Court's reliance on the irrigable-acreage standard, see Campbell, "A Proposal for the Quantification of Reserved Indian Water Rights," 1299–1321. See also Clyde, "Special Considerations Involving Indian Rights," 245–48.

34. *Cappaert v. United States*, 426 U.S. 128 (1976). See also Abrams, "Implied Reservation of Water Rights in the Aftermath of *Cappaert v. United States*," 50043–55.

35. Levi Chubbuck to secretary of the interior, November 18, 1907, file 757—Nevada: Pyramid Lake, Records of the Bureau of Reclamation, Record Group 115, National Archives; U.S., Senate, Committee on the Judiciary, Subcommittee on Administrative Practice and Procedure, *Hearings on Federal Protection of Indian Resources*, 92 Cong., 2 sess. (1972), 1297–456; Alvin Josephy, Jr., "Here in Nevada a Terrible Crime," *American Heritage*, XXXI (June 1970), 93–100; "The Pyramid Lake Briefs," *American Indian Law Review*, II (no. 2 1974), 129–68; John M. Townley, "Reclamation and the Red Man: Relationships on the Truckee-Carson Project, Nevada," *Indian Historian*, XI (Winter 1978), 21–28. The Special Master in the *Arizona v. California* case, while holding that the amount of the Indian water right should be determined by the irrigable acreage on a reservation, insisted this did "not necessarily mean . . . that water reserved for Indian Reservations may not be used for purposes other than agricultural and related uses. The question change in the character of use," he explained, "is not before me." In its written opinion, the Supreme Court did not incorporate this language, which implied the possibility of Indian water being used for nonagricultural use. Nonetheless, the Special Master's declaration prompted the Department of the Interior to reassess its position. Seven months after the *Arizona v. California* decision, the Department of Interior solicitor sent a memo to the secretary of the interior stating: "We know of no reason for holding that the Indians' water rights must be used only for agriculture any more than for holding that their lands themselves must be so used. . . . Where circumstances warrant the use of Indian lands for recreational, commercial, or industrial purposes rather than for agriculture, we believe that the reserved water rights remain available for those other purposes." Despite this change in attitude, the question will not be resolved until the Supreme Court has dealt clearly with the issue. Simon H. Rifkind, *Report of the Special Master in Arizona v. California* (n.p., December 5, 1960), 265; memo from solicitor to secretary of the interior, February 1, 1964, in Ranquist, "The 'Winter's [*sic*] Doctrine' and How It Grew," 34.

36. Interview with Raymond Simpson, attorney for the Confederation of Indian Tribes of the Colorado River, May 8, 1974; interview with Vernon E. Valantine, principal hydraulic engineer, Colorado River Board of California, April 24, 1974.

37. Norris Hundley, Jr., *Dividing the Waters: A Century of Controversy between the United States and Mexico* (Berkeley and Los Angeles, 1966), 172–80; Hundley, *Water and the West*, 316–17; "International Symposium on the Salinity of the Colorado River," *Natural Resources Journal*, XV (January 1975), 1–240; "Symposium on U.S.-Mexican Transboundary Resources, Part II," *ibid.*, XVIII (1978), 1–235.

38. See, for example, Meyers, "The Colorado River," 71; Wardlaw, "The Irrigable Acres Doctrine," 375–84; Campbell, "A Proposal for the Quantification of Reserved Indian Water Rights," 1300.

39. Roy D. Gear, Lower Colorado Regional Office, Boulder City, Nevada, U.S. Bureau of Reclamation, to the author, July 8, 1977; see also Charles W. Worthman, assistant area director, Phoenix Area Office, U.S. Bureau of Reclamation, to the author, October 25, 1973.

40. Interview with members of the Navajo Tribal Council, May 2, 1977; Price and Weatherford, "Indian Water Rights in Theory and Practice," 108–31; see also Merchant and Dornbusch, *Importance of Water Supply*, 64–65.

41. Reid P. Chambers, "Discharge of the Federal Trust Responsibility to Enforce Claims of Indian Tribes: Case Studies of Bureaucratic Conflict of Interest," in U.S., Congress, Senate, Committee on the Judiciary, Subcommittee on Administrative Practice and Procedure, *Hearings on Federal Protection of Indian Resources*, 92 Cong., 1 sess., (1971), 242; Veeder, "Federal Encroachment on Indian Water Rights and Impairment of Reservation Development," 507–11.

42. Numerous examples of these conflicts of interest have been documented in a series of articles and reports prepared by William H. Veeder, a former water specialist with the Bureau of Indian Affairs and the most outspoken champion of Indian water rights in or out of government. See especially his "Federal Encroachment on Indian Water Rights and the Impairment of Reservation Development," 490–518; "Conflicts of Interest in Proceedings before the Supreme Court of the United States," in U.S., Congress, Senate, Committee on Judiciary, Subcommittee on Administrative Practice and Procedure, *Hearings on Federal Protection of Indian Resources*, 92 Cong., 2 sess. (1971), 560–605; "Water Rights: Life or Death for the American Indians," 6. See also Richard L. Berkman and W. Kip Viscusi, *Damming the West* (New York, 1973), 151–96; Young, "Interagency Conflicts of Interests: The Peril to Indian Water Rights," 313–28; Chambers, "Discharge of the Federal Trust Responsibility to Enforce Claims of Indian Tribes: Case Studies of Bureaucratic Conflict of Interest," 235–49; Price and Weatherford, "Indian Water Rights in Theory and Practice," 115–17.

43. Price and Weatherford, "Indian Water Rights in Theory and Practice," 116, 131.

44. U.S., National Water Commission, *Water Policies for the Future: Final Report to the President and to the Congress of the United States by the National Water Commission* (Washington, D.C., June 1973), 473–83. For the views of someone who does not think the National Water Commission's recommendations would adequately protect Indian rights, see Veeder, "Indian Water Rights and the National Water Commission," *Civil Rights Digest*, VI (Fall 1973), 28–33.

45. See the statement of Secretary of the Interior Cecil D. Andrus in *Los Angeles Times*, May 25, 1977.

46. *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976); U.S., National Water Commission, *Water Policies for the Future*, 478–79; Jeff Taylor and Duane Birdbear, "State Jurisdiction to Adjudicate Indian Reserved Water Rights," *National Resources Journal*, XVIII (January 1978), 221–35.

47. Price, *Law and the American Indian*, 322; Campbell, "A Proposal for the Quantification of Reserved Indian Water Rights," 1309–10; Pelcyger, "Indian Water Rights," 751.

Also cause for alarm among Indians has been the flurry of bills recently introduced in Congress which would severely limit Indian rights. One bill would abrogate all existing treaty rights while another would permit state and local governments to regulate all important civil and criminal matters on a reservation. Still another bill would quantify Indian water rights, but it would limit those rights to the maximum amount used by a tribe during the five years prior to January 1, 1977. Even then, a tribe would have to seek judicial confirmation of its right within five years or lose them. Needless to say, Indians vigorously oppose such legislation, and in Feburary 1978 some of them dramatized this opposition by initiating "The Longest Walk" from Sacramento, California, to Washington, D.C. *Los Angeles Times*, April 7, 1978.

48. For a discussion of such problems, see Merchant and Dornbusch, *Importance of Water Supply*, 5, 60–75.

5

SOURCES OF UNDERDEVELOPMENT

Roxanne Dunbar Ortiz

By the final quarter of the twentieth century, the Indian land base comprised fifty million acres or 78,000 square miles in the United States. Thirty-nine million acres of that land were under federal trust. In 1873, Indian land holdings were three times larger than in 1970. Fifty million acres is two percent of United States territory equivalent in size to the state of South Dakota. The largest Indian reservation in 1970 was Navajo with twelve million acres, approximately the size of West Virginia, and about half the land based needed to support 130,000 Navajos in that arid land.

Nearly all Indian lands are in the western states, dry and arid country where even much of the water supply is a nonrenewable resource. Grazing and forage are the primary economic pursuits of individual Indians and non-Indians in the West, requiring large tracts of land to be economically feasible. Timber, mining, and tourism, mostly non-Indian controlled, are pursued on Indian lands.

THE CENTRALITY OF LAND TO INDIAN CULTURES

A distinction must be made between property in its economic and legal aspects and property considered as a social institution.[1] The territorial question of American Indian peoples in the United States is fundamentally an economic question, that is as a source of livelihood, but also involves the survival of human societies, and is, therefore, a social question, an ethical question, a question of human rights, and a nationalities question.[2] A people cannot continue as a people without a land base, an economic base, and political independence, as distinguished from a religious group or an ethnic minority of fundamentally the same historical character as the majority society.[3]

Many factors of Indian life are related to the land. Indian ceremonial practices and cultural integrity are integrally tied to the homeland. In the twentieth century, the impact of industrialization, urban relocation, relations with non-Indians, and with the federal and state governments revolve around Indian land rights. Aspects of Indian life affect the ways land may be used, acquired, disposed of, and the means by which Indian people form themselves in social, political, and economic terms.[4] Recent historical memory tells surviving Indian peoples that their ancestors, in the millions, died fighting for their land and liberty. The remnants of the once-vast land base of American Indian peoples are the Indian reservations under United States federal trust.

The Indian reservation parallels, but is not an integral part of the United States system of land tenure and allocation For most citizens of the United States, the reservation as real estate is comprehensible. However, the notion of the reservation as a society is incomprehensible to many. Especially, the idea that Indian governments, in some situations, have power over non-Indians is offensive.

There have been efforts to fit reservations into the prevailing political geography of the United States, comparing them to municipalities, federal districts, and public lands. Yet reservations have no analogy with those entities, nor do they have common historical bases.

Reservations form an overlay in relation with states which, in most cases, were created after the reservations were established. However, reservations are subjected to federal, and increasingly, state governmental power.

For American Indian peoples, the reservation is the historical continuation of Indian treaty rights and other negotiated settlements, and such rights are perceived to supersede the actual existence of the reservation. Beyond the reservation, the larger concept of "Indian Country" must be considered. Indian Country is the larger areas around reservations and also includes many Indian communities, such as in Oklahoma and the Northwest who no longer have reservations, yet maintain historical rights in land occupied by non-Indians such as hunting, fishing, and water rights.

THE UNITED STATES LAND SYSTEM: COLONIZATION AND GENOCIDE

The taking of Indian lands was the necessary prerequisite to the distribution of land to settlers, communities, railroads, slaveowners, and to the formation of states. The Land Ordinance of 1785 propagated a national land system and was the basis for its implementation. The Northwest Ordinance of 1787, though guaranteeing Indian occupany and title, drew up a plan for colonization, establishing an evolutionary procedure for the creation of states, in the order of military occupation, territorial status, and finally, statehood, which could be achieved when a specified number of settlers could be counted, outnumbering the native population, often requiring the removal of native people to accomplish the latter.

The United States created a unique land system among colonial powers, a system whereby land itself became a key exchange commodity for the early accumulation of capital and building the national treasury. In order to understand the apparently irrational genocidal policy of the United States government toward Indian peoples, the centrality of land sales in building the economic base for the United States government must be understood. The many racist ideologies which developed in the course of invading and occupying Indian territories—manifest destiny, incompatibility of whites and Indians, Indian "savagery"—were not causes, but rather justifications for United States government policies. Though expansion has been an integral part of capitalist accumulation, where it has occurred, the innovations of the United States government were unique, and considering United States government economic and political power in the twentieth century, were uniquely successful. The Indian reservation was born in this brutal and bloody context and continues to struggle for existence within this continuing historical reality.

The fact that most United States citizens are ignorant of or hostile to Indian rights should be no surprise, and perhaps is no accident. At no level of education, formal, or popular, is either the history nor present reality of Indian-United States government relations presented accurately. From first grade through graduate or law school, rarely are the legal and social status of reservations part of curriculum. Geography courses seldom incorporate Indian reservations as part of the political and physical makeup of the United States. Political Science courses generally exclude the structures and powers of Indian governments or their relationship with the federal and state governments. Indian legal rights, if they are known at all, are then popularly conceived as "special rights" and seem irrational, patronizing, and privileged.

Lacking knowledge of Indian rights and realities, the public generally views Indian "special rights" negatively. Indian reality either does not fit into preconceived concepts or

Indians are seen as incapable and unwilling to change and "better themselves" within those concepts. The product of this reasoning and ideology is racism and racial discrimination, a fundamental aspect of colonialism.

THE RESERVATION IDEA

How then was the reservation idea conceived and why is it not an integral part of the American governmental system? Most likely, some of those responsible for the establishment of the reservation system—government officials, settlers, missionaries and speculators—viewed the reservation as "a counterforce to the seeping take-over of the continent."[5] Others note that reservations were never integral with the United States political system, and that authorities had no intention for the reservation system to be permanent.[6]

In the era of treaty making between the United States government and Indian communities and nations, which Congress halted in 1871, the concept of reservation was one of Indians reserving a narrowed land base from a much larger one in exchange for United States government protection from settlers and social services. As the United States expansionist machinery grew more powerful, and when the United States emerged as an overseas imperialist power, and Congress had ended Indian treaty making power, reservations were then created by executive order. The concept of the reservation changed to one of land being carved out of the public domain of the United States to "give" as a benevolent gesture to the Indians. Generally, reservations have been thereafter referred to as being "given" or "created" for Indians. With this shift, Indian reservations came to be seen as enclaves within state boundaries with no political or economic reality. The idea that Indians are taking a tax-free ride on public domain is a common one.

United States citizens and some social scientists tend to believe that Indians must eventually "take their place" in the larger society and, if they are aware of the existence of reservations, believe they must cease to exist. The choices presented for the resolution of Indian underdevelopment is either Indian assimilation as individuals into the larger society or separation, isolation, strangulation, or what some have termed "apartheid" on the reservation.[7] Rarely is raised the notion of the Indian reservation system and Indian governments being an integral part of the total United States interlocking political and economic system.

The reservation has been viewed as a "campus" where Indians will learn the technique of civilization at which time the reservation would be disbanded.[8] Indian peoples nearly unanimously believe the opposite and seek to expand their territories, establish land bases for those Indian communities who have lost theirs, and to make their communities and nations economically and politically viable through self-determined development. "For many Indian peoples reservations are a highly significant reality, constituting the only familiar homeland, the major continuity with the past, the sole real property, and the principal token of the government's resolution to honor pledges made long ago."[9]

Lacking integration and defined relationships with other governmental entities, Indian governments are caught in the middle of ongoing intergovernmental conflicts. There are conflicts between the various agencies of the Department of Interior within which the Bureau of Indian Affairs is housed. Powerful financial and corporate interests lobby the Interior Department. Reservations are subject to conflicts between Interior and other departments of government and between various agencies and the states where the reservation is located. Elected representatives do not count Indian votes as significant. Whatever legislation that favors Indian self-determination is made is usually contradicted by legislation which gives power to the states or, in some fashion, reduces Indian territory,

sovereignty, and other rights. On another level, Indians are resentful and scapegoated by propertyless Anglo-Americans and even other minorities who themselves have conflicts with state and federal governments, but often believe Indians are specially privileged.

CONFLICTS WITH THE OUTSIDE WORLD

Americans who live within or near Indian reservations do not usually comprehend the distinct body of law that governs Indian peoples. United States citizens understand the existence of privileges and immunities of governments, but are unaware that Indian governments enjoy such. Non-Indians are particularly outraged by the small measure of tax immunity that Indians enjoy on the reservation. They feel that such tax immunity is unfair because Indians are United States citizens, and other citizens must pay taxes. Local and state governments also count as a "loss" tax revenue they could collect if privileges and immunities of Indian governments did not exist.

Many non-Indians live in Indian jurisdiction, particularly in those reservations which came under allotment. Much of the allotted land which remained in trust is leased to non-Indian occupants. Other allotments within reservation boundaries were sold to non-Indians. The "open" reservations, or allotted ones, often have larger non-Indian than Indian population. The surrounding state governments have acquired jurisdiction over many such reservations and parts of reservations. A 1978 Supreme Court decision ruled that Indian governments do not have jurisdiction over non-Indians in the reservations. Non-Indians who live within reservation boundaries, or who visit, generally refuse to submit to Indian police authority. Though state governments know they cannot abridge existing treaties and are constitutionally barred from jurisdiction over Indians, they do, in fact, intervene in reservation affairs, and aggressively seek jurisdiction. All too often, the trustee for Indian rights and property, the United States government, takes no action, and in some cases, is suspected of collusion with states in this subtle variety of termination.

Indian relations with the various states and their citizens differ from state to state. Specific historical developments have created varying situations. However, there are some general common conflicts. The isolation and enclave character of the reservations have severely limited communication between non-Indians and Indians, between Indian governments and county and state governments. Other conflicts arise from intrusion by powerful multinational corporations, land speculators, power companies, traders, ranchers, and farmers, who all tend to view Indian reservations as untapped or not fully tapped reservoirs of water rights, mineral and timber wealth, vacant lands, cheap labor, and potential markets. Many conflicts arise from racial discrimination, allowing for often brutal and always oppressive and exploitative discrimination against Indian people. Police brutality, excessive arrests and imprisonment, and vigilante harassment, including murder, torture, rape, and terror, prevail, particularly in the border towns. Since non-Indians have no structural framework for conceptualizing Indian legal and human rights, the entire population in Indian country tend to view Indians as protected and privileged. Yet daily, they also see Indian poverty, unemployment, vagrancy, alcoholism, and poor housing. Naturally, they tend to attribute the causes to the victim, since the believe Indians are so privileged. Some even attribute Indian "backwardness" to their cultures and to the existence of the reservations. Most people, even those who admire the charm and "quaintness" of Indian cultures, believe those cultures severely limit Indian "progress," defined in United States economic terms.

One aspect of conflict which overlaps the larger problems, and is partial cause of the above conflicts, lies in Indian education. The majority of Indians in Indian reservations and communities attend public schools. Federal funds which are supposed to compensate the expenses to school districts and to the states allegedly do not fully cover costs.

Furthermore, most non-Indians are not made aware that federal funds are provided to the public schools for the cost of Indian education. Nor are they aware that federal responsibility for Indian education is required by treaties and agreements the United States government made with Indian communities and nations in exchange for the land non-Indians occupy and the resources they enjoy. Discrimination against Indian children by teachers, administrators, and by fellow students is the tragic result of this misunderstanding and possible federal malfeasance, a misunderstanding which could be corrected to a large degree in the educational process itself.

Two other areas of non-Indian and Indian conflict threaten the very existence of some Indian communities. Hunting and fishing rights and water rights bring Indian peoples face to face with the most powerful business interests in the world, as well as with state governments and citizens' groups.

Though land may be defined, set aside, and land rights dissolved under United States laws, water and wildlife have no geographical bounds.[10] Indian peoples from the fishing communities have long fought for their basic human and legal rights to maintain their traditional economies which are viable economies in the modern world. Indian fishermen have been able to maintain their own subsistence and expand their economic base and welfare of their communities by selling their surplus produce on the commercial market. Treaties with Indian nations and communities invariably guarantee hunting and fishing in "usual and accustomed" places "in perpetuity." Therefore, even when reservation lands have been lost and boundaries long erased, Indian communities maintain hunting and fishing rights.

Several areas of dispute arise from these rights. First, they conflict with federal regulation of hunting and fishing rights on trust lands. Secondly, they conflict with state fishing and hunting regulations. Third, there are conflicts with federal regulation of ceded lands. Fourth, conflicts arise from state regulations of land.[11] Finally, Indian hunting and fishing rights conflict with landowners and with sportsmen who believe they are experiencing unfair limitations on their pursuit of happiness.

The water rights of Indian peoples are in direct conflict with state preemptive rights. State courts have adjudicated water rights historically in the United States. Indian water rights are "implied reservations" which accompany land no matter by what means that land was acquired or is held. The implication follows that additional reservation of necessary water is allowed to facilitate the land use intended when the reservation was established.[12] The erosion of Indian water rights and depletion of the water table in the west are probably the most serious catastrophes Indian communities face, not only for economic development, but for bare survival. Lacking water, western reservations become tombs. Severe limitation on Indian water access, or the dissolution of Indian water rights would mean the end of those Indian societies.

CAN INDIAN COMMUNITIES SURVIVE?

Though the question should not have to be asked in this era of "human rights," the question is still pertinent. Non-Indians generally reject the term, "genocide," to describe the situation created for Indian communities in the late twentieth century and prefer "assimilation" or "termination." Indian people call it survival. When there is a question of survival, there must be a question of genocide.

Since the Citizenship Act of 1924, Indians have formed a migrant labor force, albeit marginal in the total American labor force. Distant urban areas and border towns have received Indian migrant workers, who sometimes remain permanently, but usually return to the reservation or Indian community when economically possible or necessary. Since World War II, migration patterns have increased, especially with the Bureau of Indian

Affairs relocation program innovated in order to accomplish the termination goal of the United States government in the 1950's. By the 1970's, half the Indian population in the United States could be counted outside the reservations and rural Indian communities. The implication for many who note the statistics is that the reservation has less meaning for those who leave. This is an erroneous conclusion. Most Indians who do not return to the reservation, and many do, would do so if it were economically feasible.

Indian attachment to the land base, though, is not a romantic "back to the land" idea, nor do Indians enjoy living in rural poverty. Indian reservations and communities represent Indian nations and homelands, and Indian sovereignty as peoples.

UNDERDEVELOPMENT: THE NATURE OF THE EXTERNAL FORCE

The relationship of economic development and Indian peoples in the United States is not a twentieth-century phenomenon. Nor is the collusion of business and government in the exploitation of Indian land, resources, cultures, and labor, a recent development. From its inception, the United States government has created institutions and laws designed and redesigned in the interest of business. The very definition of colonialism implies business-government cooperation for profits and for power.

From the time European colonial powers invaded Indian communities and territories in North America, profits have been the motive and the goal. Land speculation and expansion of the land-wasteful and brutal commercial slave-worked plantation system were the bases for taking Indian land. But it was not until the formation of the corporation, a United States invention in the nineteenth century, that the sovereignty and very existence of Indian peoples were perilously threatened and continue to be threatened in the late twentieth century by the same forces.

The invention of the corporation coincided with the formation of monopoly capital and United States government overseas expansion once the continent was militarily secured. Between the Civil War and the transformation of Indian territory into the state of Oklahoma in 1907, corporations, with federal aid, attempted to annihilate Indian societies and institutions using a variety of methods still current.

In a study of the corporation in Indian Territory, H. Craig Miner defines corporation as:

> an organization legally authorized by charter to act as a single individual, characterized by the issuance of stock and the limitation of liability of its stockholders to the amount of their respective investment . . . an artificial person that could not be held accountable in a manner familiar to the American Indian way of thinking. Individual responsibility could be masked in corporate personality . . . a legal abstraction.[13]

The birth of the corporation brought about a whole new era of attacks on Indian governments, lands, and resources.

After the military power and resistance of Indian nations and communities were crushed by the growing military machine of the United States following the Civil War, compromise on the part of Indian leaders became a necessity for survival. Miner points out that "industrial civilization" diminished the relevance of persons or communities in its way. But, as Miner perceives, "industrial civilization" is not per se industrialization, but something more and different. That is, "industrial civilization" is a concept, widely held in the nineteenth century and which lingers on, justifying exploitation and destruction of whole societies; justifies expansion without regard for the sovereignty of peoples; justifies individualism and competition and selfishness as righteous character traits.[14]

The stage was set in the nineteenth century for corporate and federal collusion in the exploitation of Indian controlled and federally "protected" resources, land, and govern-

mental sovereignty. The means by which the United States government assured corporate freedom to intrude in Indian territories was indeed federal trusteeship:

> Money that Indian tribes gained by the sale of lands they were forced to leave went to gird the loins of the industrial system that was responsible. Indian funds were usually not distributed per capita to the tribes, on the grounds that savages could not use them responsibly. Instead they were held in trust in Washington. These trust funds were sometimes invested by the Indian Office directly in the securities of railroad companies and often were invested in state and United States bonds, which were in turn pledged to guarantee corporate issues in manufacturing as well as transportation. In 1864 the Cherokee national fund and the Creek Orphan Fund were invested in a United States bond issue pledged to support the Union Pacific, Eastern Division railway, which was at the time illegally cutting timber on the Delaware reserve in Kansas, while the Delawares moved in with the Cherokees to the south. The United States bonds representing the Creek orphan fund were pledged to the Chesapeake and Ohio Canal Company. In 1870, an attempt was made by the Treasury department to tax the interest on bonds of the Nashville and Chattanooga railroad held in trust for the Chickasaw tribe and to debit the Chickasaw fund for defaults by the railroad company on payments of interest and principal.[15]

Indian leaders were not so naive as to be fooled by these practices. They were powerless to prevent the abuses, but protest they did.

In response to the attempt to charge the Chickasaws for defaults by the railroad, the Chickasaws petitioned:

> The Indians did not lend this money; the United States lent it, to increase the value of its multiplying states . . . But now the attempt is made to force the Indian to contribute his pittance to the growth of all this prosperity and power; and this, too, when the United States, triumphant over the perils that once surrounded it, is more than ever able to be liberal, although nothing more is asked of it than to be just.[16]

Cherokee official, Lewis Downing wrote in 1869 that rules would have to be agreed on and adhered to, noting the differences between Indian values and those of American businessmen, "in that industry, habit, and energy of character which is the result of the development of the idea of accumulation." Free development without restraint of agreed upon policy would not do, Downing declared: "To us, it appears that once cut loose from our treaty moorings, we will roll and tumble upon the tempestuous ocean of American politics and congressional legislation, and shipwreck be our inevitable destination."[17] Downing may have been speaking in the 1970's.

Any discussion of American Indian economic development must be framed in both the historical reality of economic development in capitalist and expansionist United States, and the parallel underdevelopment of Indian communities, and the late twentieth century reality of further evolution of the corporation into practically autonomous transnational corporations.

DEVELOPMENT SCHEMES

The United States government, through the Economic Development Administration, the Department of Labor, Department of Health, Education and Welfare, and the Office of Economic Opportunity became the main source of funding for reservation economic development in the 1960's and 1970's. Bureau of Indian Affairs personnel and funds

declined in that period, indicating a hidden agenda for termination of United States trust obligation. Government programs stress the creation of jobs, using the cheap, available labor in Indian reservations, and tourism, utilizing the scenic natural resources.

There are intense efforts to persuade industry to locate in the reservations.

> The fact that the jobs created may be rendered obsolete in five or ten years is often overlooked, even though technological change may leave in its wake the same kind of brutalization and haphazard urbanization that has occurred in many instances in small towns and cities throughout the country.[18]

The kind of light industry which has been willing to establish in Indian reservations and in other colonial areas of the world does so to take advantage of the cheap and abundant indigenous labor supply. Such industry is usually final assembly production that does not provide the worker with transferable skills. The experience with Fairchild Corporation in Shiprock, Navajo reservation, exemplifies the transitory character of such industry in reservations.

Fairchild Corporation was the largest industrial employer in New Mexico in 1975, and the largest employer of Indians in the United States. In 1969, when the plant at Shiprock opened, nearly 1200 Navajos were employed. As of 1974, there were 1000 Navajos employed, 95 percent of the total work force at the plant. During 1974-75, the Navajo work force shrunk to six hundred, reportedly due to resignations, or so claimed the Mountain View, California main office.[19] Non-Indians were being hired to replace Navajos. Statistics on the Shiprock Fairchild plant deny the usual racist assertion that Indian workers are undependable and instable. The failure rate in production at the Mountain View facility was thirty percent compared with only five percent at the Shiprock plant in 1974. Absenteeism and turnover rate were normal at Fairchild Shiprock. What was happening in 1974 and 1975 that led to layoffs and finally Fairchild closing the plant was that Navajo production workers were attempting to organize. Fairchild is notorious for its minimum wage standard and layoffs before promotions are due.

An occupation of the plant by Navajo workers and supporters in February, 1975 gave Fairchild the pretext to break its lease with the Navajo government and leave immediately, demonstrating to Navajos just how fleet is footloose industry. Documents seized during the occupation reveal that Fairchild management was already seeking pretext to break its lease. The plant had been built to Fairchild's specifications at a cost of $3,301,287 and had to be completely remodelled for lease to another light industry assembly plant.[20] "Lack of confidence" is the designation made by such corporations when "labor troubles" or "political instability" develop in colonial areas, and such designation often amounts to industry boycott of those areas.

THE FALLACY OF FEDERAL ECONOMIC DEVELOPMENT PLANS

The unplanned intrusion of outside industry in the reservation creates immediate effects on the marginal reservation economy. Prices are driven up; new needs and wants are created; jobs created result in quick profits for footloose industry, but little results in terms of permanent skills, job security, and Indian government supervision and management. Non-Indian managers and workers move near their jobs and jurisdictional questions arise when they live inside the reservation. The jurisdiction question is a particularly sharp one. The Indian Civil Rights Act of 1968 which forced the United States Bill of Rights on Indian governments, poses a real danger if outside interests are in charge of industrializing reservations. Will the Indian government be permitted to exclude non-Indians from voting? If non-Indians become a majority, what would be the result? Will the Indian government

be permitted to zone and control the reservation so that parts of it remain free from non-Indian intrusion and control?[21]

Yet Indian governments and reservation residents are almost totally dependent on corporate interests and on the federal government for income. Leases and royalties account for most of the funds that support Indian governments. A cursory look at this source of "unearned" income tells a great deal about the colonial-like context and the source of underdevelopment of Indian reservations. Indeed, it is not possible to discuss Indian governmental management of this income without an analysis of the socioeconomic situation of the reservations and the extreme pressures of external forces.

The leasing of Indian land began when the United States Congress enacted a leasing act in 1891.[22] The leasing of Indian land generated some funds in a desperate reservation economic situation, though Indian governments had no control over the management of these funds. The early leases were on an annual basis. However, often the lease was a fiction which legitimized encroachment by non-Indian settlers.[23] Longer-period leases for 25 years with renewal options and even for 60 years became common. In many cases such long leases were tantamount to alienation of the land. A great deal of land was surrendered by Indians through the lease instrument:

> Through the lease instrument—often for ninty-nine years—the fiction of Indian retention is held, but the impact on the tribe is often inconsistent with the form. Ninty-nine year leases are tantamount to the sale of the fee. It may be possible to recapture a site from non-industrial users, but where discrete cohesive communities, cities, are constructed, the likelihood that they could be dislodged is minimal and non-Indian cities develop a dynamic and outward thrust of their own.[24]

Cities grew up around Indian lands on leased Indian land: Palm Springs, California; Salamanca, New York; Seattle, Washington; Phoenix, Arizona, and others.

For those reservations that were allotted under the General Allotment Act of 1887, leasing and sales created a checkerboard effect, and often non-Indians outnumber Indians within the reservation boundaries, which has created, by its nature, a termination effect.[25]

The powers of the Department of the Interior over leasing severely limit Indian governmental sovereignty. The role of the United States government, as trustee, is to oversee lease arrangements to prevent conflicts with state and local governments. Yet, the secretary of the interior has allowed jurisdictional questions to persist, not clarifying questions that emerge when non-Indians live on the reservation under lease agreements.[26]

The 1891 Lease Act stipulated that an Indian government may lease reservation lands under the supervision of the Bureau of Indian Affairs agent and subject to the approval of the secretary of the interior. The secretary has the power to control use of Indian lands. Legislation in 1899, 1902, and 1910 gave the secretary powers to grant right of way for construction of railroads, telegraph and phone lines. An act of 1901 gave the secretary power to grant right of way for public highways and legislation in 1904 and 1917 added pipelines. "Right of way" has eroded Indian sovereignty and land base, often the best lands, by opening up lands to United States citizens who have bought holdings.

The Mineral Leasing Act of 1920 and the Omnibus Tribal Leasing Act of 1938 authorized the leasing of public and Indian mineral rights. Neither law requires land use planning. Neither can compel the Secretary of Interior to bargain for fair market value.

The disintegration of Indian territories was slowed by the Indian Reorganization Act of 1934 which recognized the inherent right of Indian communities to control their own territory and governments. Section Sixteen of the Reorganization Act stipulates that it prohibits "sale, disposition, lease or encumbrance of tribal lands . . . without consent of the tribe." However, the United States government asserts "plenary power" over Indian territories, allowing the secretary of the interior to intervene.

Five billion tons of Indian coal were under lease by 1974. Eleven more Indian leases covering 259,000 acres or 400 square miles were approved in the 1970's.[27] The top fifteen of 144 leaseholders control 70 percent of all the land under leases. Exxon, Shell, Gulf, and Arco are among the leaseholders. Also seven of the fifteen leargest coal producers and three electrical utilities gained leases. Every lease was issued at industry's initiative, and often without competitive bidding. Leaseholders had paid $2.2 million in rent for Indian land leases by 1974. Royalty rates on coal ran 15.8 cents a ton totalling $8.9 million by 1974. Royalty rates rose 75 percent since the 1920 legislation; however the price of coal more than doubled. Lease terms are adjusted every ten years, yet at those times, Interior has not raised royalty rates or bargained with industry.[28] As of 1974, there were 13,582 oil and gas leases on Indian lands of 4,187,644 acres with 23,111 producing wells. There were 380 uranium leases in Indian reservations.[29]

EXTERNAL CONTROL

The secretary of the interior's power of control over leases and royalties often extends to control over the income from these sources. The secretary legally has such power only if a particular Indian Reorganization Act constitution allows it. However, Interior controls all funds held in the United States Treasury for Indian governments or individuals from Court of Claims judgments and Indian Claims Court awards, money from leases, resources, and labor depending on the particular Indian government constitution.

In a Court of Claims case in 1933, *Creek Nation* v. *United States*, the Court said, "Secretary of Interior has only such authority over the funds of Indian tribes as is granted him by Congress. He cannot legally disburse and pay out Indian funds for purposes other than those authorized by law."[30] Yet the secretary of the interior assumes power to approve all laws passed by Indian governments. A congressional subcommittee in 1964 failed to find any statute which specifically requires Interior's approval.[31] However, most Indian Reorganization Act constitutions were drawn up by attorneys employed by the Interior Department, and many do give Interior powers of approval. Indian Reorganization Act constitutions may be amended only with the approval of the secretary of the interior.[32]

Further control, in this case by state and local governments, was provided by an Amendment to the General Leasing Act in 1971, which now requires the secretary of the interior, before approving any Indian lease, to make certain that consideration is given to the relationship between the use of the leased land and the use of surrounding lands.

Leasing has provided necessary income for Indian governments, indeed the primary income. In the Standing Rock Sioux reservation in South Dakota, lease income was a large part of the total budget by the 1970's. In 1971, the Standing Rock government received $258,000 from leases. Further, $100,000 in royalties was received from oil and gas leases. Lease incomes paid to individual Indian allotees in 1971 were approximately $500,000 with around half paid to resident Sioux in Standing Rock.[33]

Similarly, mineral leasing revenues have constituted the major source of income for the Navajo government since the 1950's, accounting for 70 percent of the Navajo budget in 1975.[34] Indian governments, so dependent on income from leasing and related royalties cannot easily bargain for lease terms or negotiate new leases. Dependency on federal transfer payments are increasingly substituted by the unearned income from leasing, another form of dependency.

In addition to the restrictions and external controls exerted on Indian governments which gain income through leases and royalties, other factors are critical in understanding the nature of underdevelopment in Indian reservations. As one author puts it, "Rapid disruption of the economic system seemingly has stimulated turbulance in individual lives as the effects have spread to other aspects of the social and cultural system, and the

mounting stress has induced hostility, apathetic and anxious reactions to government efforts at developing a new economic base."[35] But the proposals made by the federal government for economic development in Indian reservations are dubious, and reservation residents have a basis for suspicion. Reservations are "irrationally bound land units not constituting a viable economic unit or a natural unit for resource management."[36] That reality does not mean that economic development cannot occur, but it does mean that development must be approached in terms of economic planning within that context. Most of the studies and commentary on Indian government management of development plans avoid the obvious implications of economic development in Indian reservations. They tend to gloss over the external forces which control the reservation and focus on the internal contradictions in suggesting solutions.

DEPENDENCY

The internal situation of Indian reservations has required dependency on unearned income in the form of royalties, leases, and federal transfer payments. Indian citizens of the various reservation communities are heavily dependent also on the federal government for jobs. In 1972, nearly 40 percent of the Indians in reservations received their income from the federal government with an additional 20 percent coming from Indian government and state and local governments. Other income includes 20 percent from commercial and industrial employment; 12 percent from agriculture and 8 percent from forestry, minerals and outdoor recreational work. Twenty percent of all Indian families in reservations are on welfare compared with the 5 percent national average. Welfare income for Indians averages $1,200 per family per annum.

Income varies from reservation to reservation depending on employment opportunities within and outside the reservation. Therefore, Papago family income is $2,500 while Laguna Pueblo income is $6,115. Some reservations have much higher welfare income than the 40 percent average. Pine Ridge citizens depend 65 percent on federal welfare payments, while Fort Belknap residents are 75 percent dependent on this source of unearned income.[37]

The lack of jobs is exacerbated by the decline in Indian agriculture and ranching. In 1940 nearly half of all Indian males were classified as farmers or farm managers. By 1970, only 2 percent were so classified.[38] Non-Indian farmers with capital assets and access to loans acquire machinery and technology which pushes Indians out of competition. Indian farmers earn about 60 percent as much as reservation Indians employed in other occupations. In 1970, dollar return per acre on grazing land was $2 for Indians and $6 for non-Indians. Return on row crops was $96 per acre for Indians and $192 for non-Indians; income from hay production was $38 per acre for Indians and $50 for non-Indians.[39]

The Standing Rock Sioux found their total share of income generated from real productivity declining in the 1970's. Three main sources of income exist at Standing Rock: First, lease income from collectively and individually owned lands held in trust by the United States; secondly, agricultural income from collective and individual ranching operations; and third, development of Standing Rock government enterprises in the early stages of operation in the 1970's.[40] Leases to non-Indian and Indian cattlemen in 1971 brought the Standing Rock government $258,000 from which Standing Rock government returned $50,000 to Indian cattle operators in subsidies. The Standing Rock government pays $200,000 in wages to its employees. Another $200,000 is received by the Standing Rock government as returns on 38 investments and royalties from oil and gas leases of which $100,000 is invested in land purchases and the remainder is paid for government operation expenses. Lease incomes paid to individual Indian lessors in Standing Rock in 1971 amounted to $500,000 with only half circulating within the reservation. The individ-

ual leases are administered by the Bureau of Indian Affairs, not the Standing Rock government.

The Bureau of Indian Affairs Agency office in Fort Yates, capital of Standing Rock, had a budget of $3,584,800 in 1971. Over 80 percent of that budget was paid out as income to Standing Rock Sioux residents as welfare payments, educational funds or direct wages for the Bureau or contract service personnel. The remaining 20 percent paid operating expenses. Income in the reservation from federal sources steadily increases, creating a gap between Fort Yates and the rest of the reservation.[41]

Ten percent of the Standing Rock Sioux population are involved in cattle operations. Indian cattle operators ran 14,000 head of cattle on Standing Rock trust land in 1971, representing 5,000 head fewer than in 1905. Indian cattle accounted for only 13 percent of the 106,000 cattle in Standing Rock in 1971, the remainder being non-Indian owned. There were 84 Indian cattle operations in Standing Rock in 1971, most being small with 55 percent having herds less than 150 head while 33 percent had herds over 200 head. In order to be economically viable, a cattle operation, as a sole source of income, should not be fewer than 200 head with calf crop survival rate of 90 percent per year.[42]

Standing Rock economic development in the form of Indian-controlled enterprises were not doing well in the 1970's. Enterprises included housing construction, a chain of reservation food stores, and a motel complex, which closed down in 1975. The goal of such enterprises has been to decrease the dependency on federal transfer payments in the reservation. This had not resulted in the early stages of enterprise development.[43]

The situation of Standing Rock is analogous to most of the medium-sized reservations in the West. The Navajo government has most clearly articulated the situation of dependency, identifying the parameters of their economic situation in the July, 1974 *Overall Economic Development Program*, which describes Navajos as a dependent, low-skilled group, with limited economic options and with a strong traditional economic orientation. The Program stresses that the Navajo government must provide for its people's needs and it must do so with limited income and little access to technology. Further, the Program notes that there is no adequately developed Navajo private sector to build the Navajo economy in the classical manner. Finally, the Program concludes that the Navajo government has almost no control over the economic forces exerted upon it by the rest of the region and the nation.[44]

PERPETUATING DEPENDENCY AND UNDERDEVELOPMENT

The Bureau of Indian Affairs favors employment strategy for increased reservation income. However, the BIA's method in the past has been to remove Indian workers from the reservations. Manpower programs have a high dropout and reservation returnee rate. In the 1970's, the Bureau turned toward reservation economic development as a strategy but still with an emphasis on wage labor or individual income for producing revenue which generally has meant light or assembly industry being brought into the reservation, while earnings are spent in border towns.

The number of plants located in Indian reservations increased from 3 in 1959 to 250 in 1974. In 1959 the 3 plants employed 391 Indians and 171 non-Indians. In 1974, the 250 plants employed 6,173 Indians and 9,390 non-Indians. The big increase in establishing plants in Indian reservations came between 1964 when there were 25 plants and 1970 which saw 162 plants in Indian reservations. However, the non-Indian plant managers made the decision during that time that Indian labor was "instable."[45]

Indian governments provide industrial sites for plants and in many cases the plant is built tailored to employer specification by the Indian government at no cost to the firm. The building and grounds are leased to the company which pays no property tax. Some

Indian governments have invested capital in these industrial enterprises totaling $25 million in 1971.[46] The results have not brought marked increase in jobs nor economic improvement for Indian reservations.

The common conclusion of many observers of the reservation situation is that a way must be found to put Indians on the American path of development. Such observers point out that entrepreneurship in the United States has evolved over several centuries, while development of business enterprise by the Indians is a new phenomenon. Since there is no business tradition to produce a body of entrepreneurs, Indians must turn to other sources to develop their businessmen.[47] Two factors are seen as necessities for this kind of economic development: reservation businessmen and creation of a labor market. The barriers to such development are seen as including the virulent racism which bars Indians from even getting initial bank loans. However, following discussion of these many prohibitive barriers, internal features are turned to as presenting the main obstacle to American style economic development.

In a study of the Navajos, Keith Gilbreath analyzes those aspects of Navajo culture which block development American style. He points to cooperative family and clan relationships, language, religion which do not provide incentives to work toward rewards. In Navajo religion there is no afterlife concept, so Gilbreath reasons that a "fatalism" like "many Oriental people" who believe nature is more powerful than man persists. Gilbreath identifies "familistic individualism" among the Navajos as discouraging aggressiveness prohibiting a competitive spirit in business affairs and the ability to save money.[48] Gilbreath fails to deal with the reality that few non-Indian businessmen succeed in the monopolistic corporate economic structure of twentieth-century America though they do not "suffer" from the same cultural "barriers" as the Navajos. Gilbreath does not specify how he expects Indian businessmen to do so even if they did choose to abandon language, religion, culture, and family.

In a similar study of the ten southern Pueblos in New Mexico, J. F. H. Rhodes of the New Mexico International Trade Commission, asserts:

> The Cochitis have no life experience in industry. A potential industry would be aware that there might well be a lack of time awareness on the part of the work force and there would be some serious questions as to the number of religious holidays.[49]

Rhodes further states that "the hard economic reality of the situation is that the Indian must play by the existing rules of the game if he is to succeed. Any other special accommodations will be more of an injustice to him than a service."[50] Rhodes theorizes that "there is a close correlation between lack of individual freedom and the lack of economic growth," in criticizing the tightly structured Pueblo social system. He recommends that, on the part of business, past "injustices" toward Indians be disregarded in present development plans.[51]

Other observers have criticized such simplistic views of economic development in a highly technological, capital-intensive monopolistic economy. Monroe Price comments that "economic development" became fashionable as a concept for Indians in the 1960's and 1970's, masking the relationship between work and income, the conflict between cultural growth and economic growth, and political necessities for reservation economic development. Price believes that the term, "economic development," as it has been conceived, is as remote, romantic, and false a goal for Indian peoples as "civilization" was in the nineteenth century.[52] Work rather than Indian government income is the emphasis of the Bureau and other government agencies. Price contends this is not such a departure from the nineteenth-century approach except "instead of a farmer, the Indian becomes a

worker, but either way, he is to find his way to 'civilization.' "[53] Price sees ambivalence in the federal government's notion of the relationship between work and income, and a refusal to see development in nonlabor terms. The goal is adequate development, but not so successful that Indians will be discouraged from leaving their home countries, which indicates the underlying goal of termination of Indian reservations.[54]

The federal government poses no programs for infrastructure development for transportation, communication, modernization, water distribution, renegotiation of leases, or primary production. These would require massive federal aid without profitable returns for the government or the corporations, and would guarantee the survival and growth of the reservations as economically viable social units.

5. NOTES

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PART THREE

THE NAVAJO NATION: A CASE STUDY

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6

TRADITIONAL PASTORAL ECONOMY

Louise Lamphere

During the last one hundred years, the Navajo economy has been transformed from a relatively self-sufficient economy to one that is fully integrated into the United States economy as a dependent and underdeveloped region. In other words, the Navajo have gone from a "natural economy"[1] to the status of an internal colony.[2] It is impossible, therefore, to treat the Navajo economy in isolation. Ever since their arrival in the Southwest, the Navajo have been in contact with other cultures, borrowing subsistence techniques and adapting them to their own needs. In many ways there has never been a "traditional" Navajo economy. Rather there have been a series of economic adaptations to changing circumstances.

In this paper I want to discuss these economic adaptations at three different time periods: (1) during the early reservation period (1870–1890), (2) during the Depression and period of stock reduction (1930–1940), and (3) finally, during the last twenty-five years (1954–1979). For each period, I will outline the major economic and political forces which characterize the Navajo economy at a "macrolevel." Then I will examine how these shaped the adaptations of local family groupings at the "microlevel." My argument will be that the Navajo have developed a flexible, matrilineally oriented kinship organization which in the early reservation period organized productive activities around sheep herding, farming, and some craft production for a market. During the succeeding periods, as Navajos began to become more involved in wage work and were less able to depend primarily on income from livestock and agriculture, this same organization of family and kin, with some changes in form, took on new functions. Rather than organizing productive activities, kin units and kin ties became the means of redistributing goods and services ultimately derived from a wage economy which the Navajos do not control. The implications of this change for economic development will be discussed.

HISTORICAL BACKGROUND

Scholars believe that the Navajos entered the Southwest as hunters perhaps as early as 1000 A.D. or as late as 1500 A.D.[3] Dyen and Aberle[4] suggest that the Navajos and other Athabaskan cultures shared a kinship system that was matrilineal and matrilocal before migration to the Southwest, while others[5] believe that the Navajos acquired matrilineality while in the Southwest, developing this orientation out of a bilateral band organization. Despite disagreement over the form of Navajo social organization at the time of entry into the Southwest, there is agreement that the economy was radically changed. The Navajos learned agriculture from the Pueblos, and possibly as early as 1630, the Navajos were planting crops and storing grain.[6] They also acquired horses, sheep and goats from contact with Pueblo and Spanish cultures. The acceptance of agriculture and other cultural patterns may have been reinforced during the period following the 1680 Pueblo revolt against the Spanish and the Spanish reconquest, at which time archaeological evidence indicates that Navajo and Pueblo populations lived together.[7] By the early 1800's there

were at least 8,000 Navajos living in Northwest New Mexico and Northeast Arizona, well adapted to a life combining herding and agriculture, the latter more prominent in fertile areas like Canyon de Chelly.

Navajo prosperity was cut short by the United States government, as it won control of the Southwest in 1848 and conducted a military campaign against the Navajos in 1863–64 leading to the incarceration of 8,000 of an estimated 10–12,000 Navajos at Fort Sumner in eastern New Mexico. The efforts to transform the Navajos into a sedentary agricultural people were a dismal and expensive failure. In 1868, the Navajos were awarded a reservation and allowed to return to the New Mexico/Arizona area to rebuild their pastoral and agricultural subsistence economy.

ECONOMIC FORCES IN THE EARLY RESERVATION PERIOD (1870–1890)

This period is characterized by a complex interaction between the developing Navajo subsistence economy, the reservation land base, and the larger United States market system. The land base, probably already too small for the post-Fort Sumner population, despite 2000 deaths during the incarceration, was expanded through several executive order additions to the reservation. However, the population grew from 11,000 in 1874 to 17,800 in 1890, offsetting the expansion of the land base. Navajo families were provided some sheep, goats, and horses under the 1868 Treaty between the Navajos and the United States. The government distributed at least 30,000 sheep to families during the ten years following 1868. These distributions and the possibility that many Navajos who escaped Fort Sumner were able to retain their herds and perhaps supply other Navajos with breeder stock account for the increase in the number of sheep and goats to over one million animals in 1887.[8]

Aberle estimates that the carrying capacity of the reservation was reached during the 1880's when there were approximately 63 sheep per capita or 250 sheep per family of four, enough to provide adequate subsistence for this number. However, these sheep and goats were not evenly distributed among families. Kelley[10] believes that at least two-thirds of the families had less than 100 sheep or less than half the minimum number of sheep needed to sustain a family of four at subsistence level. She estimates that 24 percent of the population had no sheep at all. This last figure may be exaggerated but there certainly were some Navajo families without this, the most important source of livelihood. During the period, 1870–1890, the amount of agricultural land in production declined, so that while some local groups continued to plant fields to supplement livestock production, others became more dependent on livestock or even on wage labor.

These conditions pushed the Navajos in the direction of the market place, trading their wool and woven rugs for food, clothing and tools. Navajos were trading wool at the military forts as early as 1876, and the building of the Santa Fe Railroad in the 1880's brought an increasing number of trading posts to the reservation.[11] In addition to buying raw wool, traders encouraged the production of rugs which they marketed in the East. Likewise they encouraged the making of silver and turquoise jewelry for the tourist market. In the 1880's and 1890's traders supported the cheapening of the quality of both rugs and jewelry in order to increase production.[12]

During this period, then, the Navajos, of necessity, were drawn into the national market through the mediation of merchant capital as represented by traders and rural trading posts. The land base expanded but not enough to keep pace with the growing population and growing resources base in the form of increased herds. Navajos turned to production of wool and rugs for the market or, if they had few sheep, they turned to the few available sources of wage work.[13]

KINSHIP AND FAMILY IN THE EARLY RESERVATION PERIOD

Concomitant with the development of this commercialized pastoral economy, the Navajo social structure continued to organize productive relationships through the medium of the family and kin network.

Navajo kinship is matrilineal. Each Navajo is "born of" the clan of his or her mother and "born for" (or related to) the matrilineal clan of his or her father. The notion of matrilineal clans may have been part of the social organization of the Proto-Athabaskan ancestors of the Navajo as Dyen and Aberle suggest.[14] Or the Navajos may have borrowed matrilineal concepts from Pueblo peoples. In any case, matrilineality may have been supported by the development of localized agricultural groups centered on the labor of related female kin. Among the Western Apache, localized clans are associated with localized agricultural resources. With the Navajos, the acquisition of sheep and livestock and the accompanying population growth created population migration. In addition, the disruption of the Fort Sumner period severed any clear relationship between clan and locality. Clans, therefore, are not landholding or ritual groups as they are among the Hopis. They primarily regulate marriage, since an individual should not marry into his or her own or father's clan. Clanship embodies the values of solidarity or *"k'e"*[15] and hospitality is extended to members of the same clan. During the early reservation period, members of the clan in a local area may have been important in dispute settlement and social control.[16] In the period after Fort Sumner, the membership of clans became dispersed over several areas of the reservation. In each local area there are usually two to four clans which predominate because of the history of settlement and the consequent marriage and reproduction of families. Clans with smaller numbers often represent males who have married into the community or descendents of women who lived virilocally or did not produce many children.

Evidence concerning the history of settlement in local areas of the reservation between 1870 and 1890 is difficult to find, but the community histories of Ramah,[17] Klagetoh,[18] and Navajo Mountain[19] indicate that even these peripheral areas of the reservation had been settled prior to Fort Sumner. There seems to have been considerable movement prior to and following Fort Sumner, but during the 1870's to 1890's, couples began to permanently settle in an area.[20]

In Ramah during its founding period, 1870–90, for example, eleven families, many of whose parents had been born on the Eastern Navajo reservation, came to live in the Ramah area. Some had also used the Ramah area before Fort Sumner. Many of the men were matrilineally related, that is, real or classificatory brothers, mother's brothers, sister's sons and members of the same clan. They brought with them women whose clans became dominant in the community during later generations.[21] These families consisted of two clusters of kin centered around a man named Cojo and one named Many Beads. These families probably formed a series of dispersed nuclear or extended family "camps," each pooling their sheep and cultivating fields together.

Thus, the basic unit of production was the family (*Hastiin X dóó ba'ádchíní*, a man, his wife and children). In the founding generation in Ramah, nuclear families tended to be accompanied by a parent or joined soon by a sibling, spouse and children. For example, Cojo brought his wife and his mother to the Ramah area. Five years later his wife's sister arrived and became Cojo's second wife. Many Beads immigrated with his wife, whom he had married at Fort Sumner, and three small children. They were soon joined by his younger brother, his wife and daughter by a previous marriage. This woman later became Many Beads's second wife.

As the children from these and other initial families grew up, they married with children of other families and founded camps with separate hogans and sheep corral in the same neighborhood as the wife's parents, which indicates uxorilocal or matrilocal residence.

Some sons also remained in the neighborhood of their mothers, practicing virilocal rather than uxorilocal residence. Thus each family had a "developmental cycle" which included a stage where a young couple was living in the camp of the wife's mother or husband's mother, depending on circumstances. Later they moved away to found a camp in the same neighborhood with use rights to the grazing land claimed by the parents. As their children grew older and married, the process was repeated.[22]

In contrast to Ramah, the settlement of Klagetoh, which is in the southern portion of the present reservation, was motivated by claims to agricultural land more than to use rights established in pasture land. In the late 1930's Collier[23] isolated ten different kin groups. Five had histories which extended back to the 1860's and 1870's. Two families had rights to fields in the Klagetoh area, one even before Fort Sumner; another two families had remained near Klagetoh to avoid capture during the Bosque Redondo period. The fifth family, that of Begay, came to live near Klagetoh Spring five years after Fort Sumner. During the founding period, there was a great deal of seasonal migration among the older couples and their growing children and new spouses, some using fields in other communities or staying with a spouse's relatives, near the railroad to the south, for example. Some children of the founders would marry into distant communities, live with their spouses and later return to Klagetoh to establish residence near a married sibling or parent that had remained. Others moved elsewhere as a result of marriage or a family conflict. In some cases, marriage into another community resulted in the couple remaining in Klagetoh, but the spouse's parents and siblings migrated to Klagetoh to found a neighboring camp.

In a third community, Navajo Mountain, the Rainbow Plateau was settled around 1890, much later than either the Ramah or Klagetoh communities. Although there were Navajo families in the Navajo Mountain area before Fort Sumner,[24] resettlement was initiated by Whiteman Killer, his wife, three daughters and his sister, a strongly matrilineal cluster of camps. This contrasts with both Ramah and Klagetoh which are both larger areas and where more families settled and subsequent development of camps followed from both uxorilocal and virilocal residence of married children, creating a less matrilineal pattern.

However, in these three communities, the camp, whether composed of an older couple and married children or a middle-aged couple with unmarried children, had one sheep herd and a joint set of fields. Ties of marriage and clanship united a wider range of camps and provided a pool of relatives who could help with economic activities and ceremonies such as "sings," the girls' puberty rite, or marriage feasts.

Given the wealth differences that must have developed during this period, these clusters of extended families served two purposes. For the very wealthy, the camp formed a labor pool of married sons and daughters who could take care of herding, shearing and other livestock activities, as well as cultivation of fields and production of rugs for trade. More distant relatives who had fewer or no sheep could be recruited as occasional herders and for labor-intensive tasks like shearing. A second pattern probably developed for those with smaller herds. Here the extended family camp was also an arena for pooling resources and labor, but only some of these activities revolved around livestock and agriculture. Since not as many adults were needed for herding, women could commit more time to weaving while some of the men could take advantage of wage work or herding for richer families.[25]

Wealth inequalities were also mitigated by mechanisms for redistributing goods and services. There is ample evidence that food and goods were redistributed through Navajo "sings" which were given to heal sickness caused by contact with dangerous natural or supernatural phenomena.[26] Long nine-night versions of the Night Chant and the Fire Dance as well as the three-day Enemy Way all entail the preparation of vast quantities of food which is provided for those who attend. The Enemy Way also includes gift exchanges between two local groups of people.[27]

THE CULTURAL IDEOLOGY OF GENEROSITY

In addition to the system of social relations which organized herding and agricultural activities around the nuclear or extended family camp and focused on the exchange of food, gifts and services within these groups and, on ritual occasions, to a wider collection of kin as well, the Navajo developed a set of ideas which back up cooperation and redistribution. Witherspoon translates the Navajo term, *"k'e"* with the English words, "compassion," "cooperation," "friendliness," "unselfishness," "peacefulness" and "all those positive virtues which constitute intense, diffuse, and enduring solidarity."[28] Thus the word *shik'ei* (my relatives) specifies those with whom one relates according to a special kind of *"k'e"* or feeling of solidarity and cooperation.[29]

At a more general level, Navajos value "cooperation" or "helping out" not just among kinsmen but among other Navajos as well. In other words, "Navajos feel strongly that helping is good and they live under a diffuse obligation to give aid when requested or when it appears to be needed."[30] Another aspect of helping is the importance placed on taking good care of relatives and possessions. Navajos are criticized for not taking care of others or their belongings, and there are a number of injunctions against behavior which is seen as the opposite of being cooperative and helpful. For example, a Navajo should not be stingy, mean, angry, envious or lazy.[31]

Anthropologists have labeled this kind of ideology one of "generalized reciprocity."[32] It is important to emphasize that the obligation to cooperate is diffuse and generalized, not tied to specific kin ties or situations. Thus a Navajo is generally obligated to fill requests and expects that he or she will be able to find someone to fill his or her own requests. This emphasis on cooperation is complemented by Navajo stress on individual autonomy and decision making by consensus as I have shown elsewhere.[33]

In other words, the Navajo social structure, based on the nuclear and extended family camp and a network of matrilineal kin, is backed up by an ideology strongly emphasizing cooperation, sharing, and reciprocity. To go against these values is to behave in an un-Navajo fashion and to incur negative sanctions from others. This social structure and parallel set of values developed, in all probability, in relation to a subsistence economy based on changing and expanding resources, such as acquisition of agricultural and livestock raising techniques, the disruptions of Fort Sumner and return to the homeland. How both are related to changes since 1890 will be the subject of the remainder of this paper.

STOCK REDUCTION AND THE TRANSITION TO WAGE WORK

The decade of the 1930's was perhaps one of the most crucial for the Navajo economy, since the government policy of stock reduction resulted in a decline in the number of mature sheep and goats by 30 percent,[34] and a growth of population from approximately 39,000 to 50,000. The combination of these two factors led to a decline in the number of sheep to twenty per capita, much below the estimated subsistence level of fifty per capita.[35] Sam Ankeah, Chairman of the Navajo Council from 1946–54, called the sudden reduction of Navajo livestock, "the most devastating experience in [Navajo] history since the imprisonment at Fort Sumner from 1864–1868."[36]

The Navajo range had been overgrazed since the 1880's, but a drought in the first years of the decade and low stock prices, which discouraged Navajos from selling their lambs, exacerbated the situation. When John Collier, a pro-Indian activist, who was also "conservation-minded" became Commissioner of Indian Affairs in 1933, he made the reduction of Navajo herds a key element in his "New Deal" program for the Navajos. Collier convinced the twelve members of the Navajo Council that they should accept

reduction, that it would improve the quality of Navajo sheep, and hence, income, and that new wage jobs, provided by such Depression programs as the Civilian Conservation Corps, would make up for the lost income from livestock.

It is not clear whether reduction was primarily the idea of Collier and other conservation-oriented Indian agents or whether there were other interests at work. For example, Collier mentioned to the Navajo Council that erosion from the Navajo reservation was responsible for the silting up of the Boulder Dam site,[37] indicating that government and agribusiness might have been interested in reduction. Also the elimination of Navajo sheep from the market could have been advantageous to New Mexico and Arizona Anglo ranchers.[38]

Reduction proceeded in two stages. From 1933 to 1937, was a period of voluntary reduction. This was followed between 1937 and 1941 by a period of systematic reduction and control of herds through the establishment of grazing districts and sheep permits. In the first year of reduction, large herds were mainly culled for poor stock, with the result that the number of sheep purchased with federal funds did not substantially reduce the number of sheep on the reservation. The reduction of 1934, in contrast is bitterly remembered by elder Navajos. The Navajo Council agreed to a new reduction number of 150,000 goats and 50,000 sheep. As Aberle describes what happened,

> The sale was badly mismanaged. Agents in some areas put heavy pressure on owners, and often on small owners, to sell. It proved impossible to deliver all the goats to the railhead. So some were slaughtered and the meat dried and given back to the Navajos; others were shot and left to rot; still others were shot and partly cremated with gasoline. In one place, 3,500 goats were shot and left. To the Navahos, this waste was appalling, and the attitude toward their valued resources was incomprehensible.[39]

Oral history interviews of this period also tell of the pressure tactics on the part of Anglos, arrests of resisting Navajos and Navajo bitterness over the destruction of their livestock.[40] As Howard Gorman, a member of the Navajo Council said,

> All of these incidents broke a lot of hearts of the Navajo people and left them mourning for years. They didn't like it that the sheep were killed; it was a total waste. That is what the people said. To many of them livestock was a necessity and meant survival. Some people consider livestock as sacred because it is life's necessity. They think of livestock as their mother. The cruel way our stock was handled is something that should never have happened.[41]

The effect of these reductions and those in the following years was to impoverish the small herd owners, while larger herd owners were affected, though not to such a devastating degree.[42]

During the second phase of reduction a maximum herd size was determined for each grazing district and those with herds over this number were pressured to reduce. At the same time, the wage jobs connected with the New Deal were drying up, and even those who were able to get jobs were not necessarily those hardest hit by reduction.

By 1940, Navajo dependency on livestock and agriculture was 58 percent, with 30 percent of the remaining income from wage work, 9 percent from arts and crafts, and 3 percent miscellaneous.[43] There was considerable variation in the dependence on livestock versus wage work in different parts of the reservation, but the decline in proportion of wage work between 1936 and 1940 indicated a lack of governmental jobs and a general impoverishment of families.[44]

NAVAJO KINSHIP IN THE LATE DEPRESSION

Navajo extended families at this point in time were adapting to a mixed wage and livestock economy. Navajos, whose parents had settled in local areas in the 1870–1890 period, were themselves heads of extended families, and their married sons and daughters were already establishing their own camps and sheep herds. By comparing the same three communities, we can see how Navajos were still using the extended family and kin network as a way of pooling labor for subsistence.

At Navajo Mountain in 1938, Collier found that the Navajo camp was the fundamental economic unit. Whether these were extended families or newly formed nuclear family camps, these were the units which herded sheep together and cooperated in agricultural activities. A few extended families even had two or three herds, probably because of the large number of sheep within the family. Agricultural activities were often shared among several camps especially when fields in Paiute Canyon were cultivated, a distant canyon where several families moved for part of the agricultural season. Despite these exceptions, Collier concludes that a single camp was the central unit for cooperation.

In contrast, at Klagetoh, two or three camps of related kin, or members of an extended family who had dispersed to two or three hogan clusters, pooled their sheep into single herds and cooperatively worked their fields. These "cooperating groups" represented the same size labor pool, 15–16 persons including children, as did the camps at Navajo Mountain.

A similar situation seemed to exist at Ramah where there were 88 nuclear families, 71 of whom lived in 28 extended families.[45] Leighton and Kluckhohn group some of the extended families and some of the nuclear families into eight "outfits" or those who may habitually pool their resources on some occasions, such as planting and harvesting or the giving of any major ceremonial for an individual member.[46] In Ramah, most of these cooperating camps occupied contiguous territory, and the unit seemed to be larger than that in Klagetoh.[47]

Anthropological studies from this period clearly document the Navajo emphasis on generosity and sharing outlined above. Although the 1930's brought a situation of impoverishment to many families, most relied on the household, camp and kin in related camps to deal with their need for labor. One might surmise that camps or groups of camps pooled goods and services during difficult times, and that wealthy families continued to hire, as herders and other laborers, members of less well-off families, whether relatives by blood or clan. At Klagetoh, for example, Collier[48] indicates that five men worked for affines, five worked for clan relatives and four worked for nonrelatives.

RECENT TRENDS IN WAGE WORK

Since 1940, Navajo dependency on wage labor has continued to increase so that 60 percent of reservation income in 1960 was from wages and 65 percent in 1974.[49] A second large source of income is from welfare payments, social security, and unpaid services, such as education and health care. Livestock and agriculture provided only 8 percent of income in 1960 and 2 percent in 1974. As the population has continued to expand, the land base and number of sheep and goats has remained the same, the care of flocks, for those camps that still have herds, has been relegated to the elderly.

In this transition to wage work, Navajo camps of extended and nuclear families have continued to remain important, but their members have engaged in different activities. There have been two distinct phases, one in the late 1950's and early 1960's and a second period which continues into the late 1970's. During the late 1950's most major sources of income involved migration off the Navajo reservation through either work on the railroads,

agricultural wage labor or participation in the Relocation Program which entailed migration to large cities throughout the West.

We can see the impact of railroad work by examining Shonto in the mid-1950's, a rural community, still distant from paved roads and urban centers.[50] Wage work was primarily available off-reservation through employment with the Santa Fe railroad, and wages and unemployment benefits from this source provided 50 percent of the community income. Other wage work accounted for an additional 15 percent. Only 8 percent of the community income derived from sales of wool, lambs and agricultural products. Another 10 percent was accounted for by consumption of sheep and agricultural products by families themselves. Finally, 10 percent of community income came from welfare.[51] All but three camps depended on a combination of income from wages and livestock activities, and the three remaining camps were entirely dependent on wages.

Elsewhere on the reservation, dependence on wage work was increasing, through a combination of railroad work and participation in agricultural labor—harvesting sugar beets, oranges, potatoes—in other western states. One example is Copper Canyon[52] located on the eastern side of the reservation and in comparison to Shonto, nearer to towns and located on a paved road. By 1966, railroad wages were already surpassed by other wage work, including agricultural labor and some wage work in Gallup. More significantly, 53 of the 194 households had migrated off-reservation to towns and cities, often Farmington and Gallup, but even as far away as Denver, Chicago, Los Angeles, and Dallas. An additional 45 individuals were working away from the community, so that a full 25 percent of the population had emigrated, although some have returned in recent years. Livestock and weaving certainly accounted for no more than 14 percent of community income. By the mid-1960's there was a shift to more local wage work, partly because of the Navajo Tribal Works Program, other Navajo government funded projects to dig shallow wells or build houses, and "War on Poverty" programs, such as the Navajo Youth Corps.[53]

Thus in this second, and still continuing phase of wage dependency, there has been an increase in on-reservation wage work. Relocation to large cities, as many anthropological studies have shown[54] has proven a difficult situation for many Navajos who have been pushed into low-wage jobs, have had difficulty finding housing, and who have been estranged from the culture of the Navajos as well as a support network of relatives. After the 1960's the Bureau of Indian Affairs no longer actively encouraged relocation, and young Navajos have either found wage jobs in their own rural communities or migrated to other towns and communities on the reservations or just beyond its borders.

Some of these jobs were provided by a few industrial experiments, such as the Fairchild Plant in Shiprock and the General Dynamics plant in Fort Defiance. Other jobs have been connected with the various strip mining and power plant developments on the reservation. Also, there has been a blossoming of white-collar, paraprofessional, and professional jobs which have grown up around the Bureau and Navajo government bureaucracies, the school systems and health services. Some of these are CETA jobs or training programs which provide only temporary wage jobs, but others establish Navajos within bureaucracies and provide steady employment.

Thus, there seems to be a two-class system of wage workers developing on the Navajo reservation. On the one hand are permanently employed members of the bureaucracy who live in the Window Rock and Fort Defiance area or in one of the other agency towns—Shiprock, Tuba City, and Crownpoint—probably in recently built block and stucco houses or trailers. On the other hand are those who remain in rural areas, dependent on fluctuating sources of wage work, from Navajo government jobs, CETA funds, or various training projects and paraprofessional jobs. In between, are highly paid, usually male, wage workers who are employed in mining, road repair and construction who may have moved

their families to building sites or who commute from their rural homes or an agency town to their jobs. Many of these jobs, though high paying, will disappear after construction is completed.

The change in wage work from off-reservation to on-reservation is dramatically seen in Ruffing's 1971 restudy of Shonto.[55] Local employment had increased through the construction of the Shonto Boarding School and tribally funded projects. The number of permanent local jobs had increased from 8 to 38, and the number of temporary jobs from 16 to 93. Most Shonto men preferred to take a temporary wage job combined with traditional economic activities rather than to participate in off-reservation railroad jobs though these were available.[56]

Research conducted by the Lake Powell Research Project in the Page-Lechee area and on the Black Mesa when the Navajo power plant was being constructed[57] indicates that although a substantial number of local residents are employed through such projects, perhaps 25 percent of the jobs go to Navajo men who migrate to the area either singly or with their families. In 1972, heads of households employed at the power plant earned perhaps $7,000–$10,000 a year if they were able to get skilled union jobs or unionized jobs for laborers. Nonunion unskilled laborers, more likely those from the local area, earned only $2.00 to $3.00 an hour compared with the $6.60 wage rate for union laborers.[58]

Galloway, Levy and Henderson argue that in the Page area,

> . . . these populations . . . have migrated into this area specifically for these purposes of taking jobs. It appears that the better educated and more skilled Navajos are willing to leave their home communities in order to support themselves and their families. The result is that the rural areas are drained of young people . . . The present job boom has all the appearances of being temporary. When construction is completed at the Navajo Generating Station (1973) employment levels will drop precipitously. The majority of the Navajo workers will have to move elsewhere in search of work. Large proportions of Navajos employed at the generating station still own livestock that they leave at home with relatives. The livestock may serve as a hedge against unemployment . . . We are witnessing a geographic rearrangement of populations rather than the modernization of an indigenous one.[59]

NEW FUNCTIONS FOR THE NAVAJO HOUSEHOLD, CAMP AND KIN NETWORK

From the perspective of Navajos still living in rural areas, wage income is still unstable. Older couples, widows, and divorced women maintain extended family camps where they keep a few sheep, plant their fields, and provide a home refuge for their married sons and daughters, who take a series of short-term wage jobs either in their own community, travel with their spouses to other rural communities so that the spouse can get such a job, or migrate for a period to an Agency town or power plant site for wage work. When these jobs dry up, the young couple returns to the parental camp for a time, until something else turns up. Older men and women, for their part, are able to contribute social security and welfare payments which are redistributed throughout the extended family in terms of shared groceries, meals, gifts of clothing or loans.

Maintaining a rural camp still takes a lot of time and effort. For many families, wood and water still must be hauled; long trips must be made to stores or trading posts for food and clothing. For these activities a pickup truck or car is essential, and the extended family forms a structure for pooling the use of transportation.[60]

The labor involved in livestock and agricultural activities is still handled within the camp. In 1966, I found that as herding and agricultural activities have declined, these tasks continued to be coordinated within the camp, but there was a growing tendency to involve

only one or two households in an extended family camp, especially where herds and fields were small and little manpower needed. For the minority of families who had larger herds of over 100 sheep, there was a tendency for adult members of all households to be involved in herding, shearing, dipping, or in the cultivation of fields. If help was needed for a task like shearing, it was increasingly the pattern to recruit distant relatives and to pay them for their labor.[61]

Thirteen years later, I would suspect that the young adult population is even less involved in traditional economic activities, but the parents, aunts and uncles maintain these activities as the grandparental generation passes on.

In the 1970's, Aberle argues that there is no stable and predictable single source of income. In response to this situation,

> Not only is there continual gift giving and borrowing with the extended family to cope with these variations, but there is a wide circle of kin who depend on each other, who ask for help when they need it and give help when they can. This style of economic life we may call reciprocity—the Navajos call it 'helping out' when they speak of it in English—and the ethic that accompanies it is generosity.[62]

The ethic of generosity and cooperation which developed in a subsistence economy now functions in a wage-dependent economy where there are low and fluctuating levels of income.

Over the past fifty years the Navajo nuclear and extended family camp has been transformed from a unit of production and consumption to one which consumes and redistributes wage income and welfare, using agricultural and pastoral pursuits as a hedge against adversity and as a supplement to wage income.

CONCLUSIONS

In this paper I have outlined the ways in which Navajo families living in the rural areas of the Navajo Nation have responded to the conditions of underdevelopment described by Ruffing in the next paper. The development of energy resources by transnational corporations along with the growth of the public service sector (recently with funding through the CETA program) has created wage jobs in the rural area, but has not solved the extensive problem of unemployment and underemployment in a population which can no longer depend on livestock and agriculture. Rural Navajo social organization, based on scattered nuclear and extended family camps and a network of relatives has responded to this situation by using "traditional structures" for the redistribution of wage income.

Here we find a convergence with family and kin structures of other minority and working-class groups in capitalist industrialized countries. Carol Stack's study of urban Black families[63] demonstrates how, within a population dependent on fluctuating wage jobs combined with welfare payments, strong kin networks operate to help individuals find housing and employment as well as to redistribute food, clothing and cash to those members of the network who have hit a "low" in their cash resources. Studies of working-class families in London during the 1950's[64] have emphasized the ways in which a husband's and wife's relatives, particularly parents, are used in finding jobs and obtaining housing. Women rely on their mothers and sisters for a myriad of daily exchanges, ranging from short visits and care of children after school to more substantial help with food, loans of cash, and help during times of difficulty.

In cities along the eastern United States seaboard, studies of working-class communities in ethnic neighborhoods[65] have emphasized the place of the family in providing psychological and cultural support for family members in addition to circulating important information, socializing children and providing role models and social control for family

members. In addition, kin networks have provided more tangible aid in finding jobs in factories and construction work, entrée into voluntary associations and church groups, and help in financing special events such as weddings, baptisms, and funerals.

The resource redistribution functions of Navajo family and kin networks have developed in a rural area and in the context of a matrilineal kinship system and a specifically Navajo ideology (based on notions of *k'e*, generosity, and "helping out"). However, the convergence with other family structures indicates that families in similar class positions within industrial societies develop important and self-reliant methods of dealing with the economic difficulties that they face.[96] If economic change in the Navajo Nation begins to take a turn toward economic independence and sovereignty, Navajo families would respond accordingly, perhaps regaining some of their productive functions, as well as continuing to redistribute goods and services to family members.

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7

DEPENDENCE AND UNDERDEVELOPMENT

Lorraine Turner Ruffing

The Navajo nation appears to be an internal co'ony of the United States in every conceivable sense. Navajo territory is isolated geographically; as individuals and as a society, Navajos are discriminated against racially and culturally; and it is dominated politically, economically and ideologically. The Navajo nation and its resources are controlled by the United States Department of Interior (DOI). Such control has allowed giant corporations to siphon off Navajo oil, gas, coal and uranium for their own benefit and for the benfit of the American public. Meanwhile the Navajo economy remains undeveloped and the Navajo people are subject to a degree of deprivation unmatched by any other minority group within the United States.

While the Navajo nation bears all the outward manifestations of a colonial dependency, the analogy is not completely accurate. Indian reservations were not created for the express purpose of supplying resources to the United States. They are, rather, remnants of the massive theft of Indian land. Most treaties which established reservations explicitly stated that Indian people retained permanent rights over small tracts of land in exchange for the vast territories ceded. Therefore, it is clear that the United States government intended to take the bulk of Indian resources outright leaving Indian people with marginal resources. The reservations were to function as holding pens for the survivors of Indian wars and not as sources of raw materials, which is the main function of a "colony." That reservations contain any resources at all is the result of either the ignorance or largesse of the victors.

Today, Indian peoples are witnessing a renewed assault upon their remaining resources. The United States government would like to end the special colonial-like status of Indian people because that would make the final theft of Indian land, water, timber and minerals easier. For this reason Indian people in the United States demand that the federal government maintain and reinforce the protected status of their lands, but at the same time concede to them the power of self-determination.

Although the colonial analogy is not exact, it has been used by a number of scholars. The colonial frame of reference is popular and useful because, under the reservation system, Navajo people and resources have been subordinated just as surely as in any colony.

The object of this study is to examine how United States economic and political domination of the Navajo nation caused and perpetuates its underdevelopment. It is tempting to use models developed by economists to illuminate the process of underdevelopment that is still occurring in Third World countries. Among the most well known models of economic subordination are Prebisch's center-periphery model; Frank's metropolis-satellite model; and Amin's Third World-advanced countries model.[1] They all treat the underdevelopment of the Third World as the result of its historical relationship with the advanced countries both before and after their independence. While none of these models can be applied fully, some use will be made of them along with the notion of conflicting economic interests to illustrate the process of underdevelopment in the Navajo economy.

MILITARY CONQUEST AND CONTROL (1845–1921)

The Navajos lost their autonomy soon after the United States took the region from the Republic of Mexico in 1846. The United States government, determined to protect its settlers from raids, launched a series of expeditions against the Navajos. Only after their land had been burnt and pillaged, did the Navajos surrender in 1863–64.

Political subjugation formally began when 8000 defeated Navajos were incarcerated at Bosque Redondo in the New Mexico desert. Federal agents resolved to transform their prisoners into Christian farmers, and they began an agricultural project which was doomed to failure in the region. In the course of the experiment, 2000 Navajos died of starvation and exposure. The main reason for change in policy, however, was Congress's objection to the cost of the project. In 1868, Navajo leaders signed a treaty with General Sherman and were permitted to return to a 3.5-million-acre reservation, which was a small portion of their original territory of 20–30 million acres.[2] The government, under the treaty provisions, issued between 15,000 and 30,000 sheep and goats. Though their buildings and croplands had been burned, and few of the treaty promises of material aid were kept, the Navajos were able to successfully reestablish themselves in their homeland.[3]

The 1868 Treaty, which was typical of the "Peace and Friendship" treaties between the United States and Indian nations of the time, established what is known in federal Indian law as the "trust responsibility." The United States government entered a commitment to protect Indian people and property in exchange for the vast land area it obtained. The conduct of Indian affairs was transferred from the War Department to the Department of the Interior in 1849. Thus, the "trust responsibility" is the special duty of the Secretary of the Interior who delegates it to the Assistant Secretary for Indian Affairs who in turn delegates it to the Commissioner of the Bureau of Indian Affairs (BIA), an agency within DOI, and various BIA officials.

The trust responsibility is commonly exercised through secretarial approval of certain Indian actions, particularly the management of money and resources. Excessive delays in granting approval have inhibited Indian government-initiated development, has allowed non-Indian interests to expropriate Indian resources often without their knowledge, and has inflicted heavy financial losses on Indian communities. Fulfillment of the trust responsibility is continually jeopardized by conflicts of interest. Each agency within Interior works for the benefit of some interest group: the mining industry, cattlemen, timber industry, sportsmen, and others. Among the agencies within Interior, the Bureau of Indian Affairs is weakest in terms of political influence and technical competency. Consequently, it has not had the will nor the ability to defend Indian interests.[4]

The Navajo reservation, unlike other Indian reservations, was enlarged several times until it approximated the original land-use area.[5] The size and remoteness of Navajo territory made direct control by United States miltiary or Bureau agents difficult. The social organization of the Navajos did not facilitate such control either. Historically, the Navajos were not a corporate body, and apparently never required a centrally organized government. Within the pastoral communities, there were certain leaders who were respected for their wisdom. While they did not have any enforceable authority, people often gathered to listen to them speak.

At Bosque Redondo the United States Army officials in charge formed a council of these Navajo leaders, and five were designated to conduct business. When the original leaders died, the Army or Bureau agents appointed "chiefs" with whom they could deal. However, the councils had little impact on the Navajo people because of the lack of acceptance of the authority of these "chiefs." In any case, the system was abandoned in 1910, leaving the Bureau of Indian Affairs to govern directly. As a result of their relative isolation, the Navajos actually prospered, increasing both in population and livestock.[6]

INCREASED FEDERAL INTERFERENCE AND ECONOMIC DEPENDENCY (1922–1978)

The discovery of oil in 1922 in Navajo territory increased federal interference and ended Navajo isolation. According to the Navajo-United States treaty of 1868, no Indian land could be leased without the consent of 75 percent of the male Navajos. To legitimize corporate expropriation of Navajo resources, the Bureau of Indian Affairs hastily set up a "business council" of three Navajos to sign oil leases in the name of the three-fourths required. Even the Bureau commissioner had misgivings about the propriety of the procedure, and so a larger Navajo council, composed of community representatives and alternates was organized in 1923. While the council was more representative, it was virtually powerless. The council met only at the call of the Bureau of Indian Affairs commissioner and its members could be removed by the Secretary of Interior. The only power it appeared to have, the power to approve leases, it was pressured to cede to the commissioner in its first session.

The council was dissolved in 1936 after the Navajos rejected the Indian Reorganization Act of 1934, the rejection being due to outrage at the federal livestock reduction program which destroyed the self-sufficiency of the Navajo economy. A new council of Navajo leaders was organized in 1937 and has continued to operate under regulations promulgated by the secretary in 1938. The rules provide for a council of 74 members plus a chairman and vice-chairman, all elected by popular vote and secret ballot, providing for a measure of democratic legitimacy for the present Navajo government.

Over the years the Secretary of Interior and Congress have allowed the Navajo council to assume legislative powers. The availability of funds from mineral royalties also facilitated the creation of a tripartite government with the addition of an executive branch and a judicial branch. Navajo revenues grew from an average of $70,000 per annum in 1921 through 1937, to $1 million from 1938 to 1956, to $18 million in 1976.[7] By the late 1970's, the Navajo government, like any other government, was fulfilling many roles. It is law-maker, policy maker, administrator of justice based on Navajo values, a provider of public goods and services, owner of natural resources, and an investor in Navajo government enterprises. This apparent liberalization of Navajo governmental independence only brought Department of Interior policy into conformity with early United States Supreme Court decisions which proclaimed that "Indian tribes possess all sovereign powers over domestic matters within their territorial boundaries unless the United States decreed to the contrary."[8] Despite sovereign power, the Navajo government is heavily influenced by federal policies and budgets in all aspects of its planning, its management of resources, and its disposition of Navajo revenues.

SOCIOECONOMIC CONDITIONS

The Navajo territory comprises 17 million acres. Poor soil and scant rainfall make difficult the cultivation of more than 50,000 acres even though the Navajos possess sufficient water rights to irrigate five million acres. Most of the land is used for grazing 500,000 sheep, 50,000 cattle, and 30,000 goats.[9] There are over 400,000 acres of commercial forest which yield $1–3 million in annual stumpage payments.[10] The territory is rich in subsurface minerals: 100 million barrels of oil; 25 billion cubic feet of natural gas; 2.5–5 billion tons of easily accessible surface coal; 80 million pounds of uranium.[11] In 1975 mineral revenues amounted to $19 million.[12]

There is a stark contrast between the wealth of Navajo resources and the well-being of Navajo people. In 1975 there were 147,210 Navajos. The potential labor force was estimated to be 61,182 with 33.5 percent permanently employed, 21.8 percent under-

employed, and 44.7 percent completely unemployed. Statistics on Navajo income and education are available only for 1970. When income (cash and kind) from subsistence activities, wagework, and welfare are taken into account, average Navajo income per capita was $900 compared to $3921 for the U.S. in 1970.

The average educational level for the Navajos was five years, compared to the national average of twelve years. The average age of death for the Navajo people is 45 years, which is almost 25 years less than the rest of the population. Fourteen percent of Navajo children die before the age of five, which is four times larger than the national rate. In 1975, 80 percent of Navajo homes were rated as substandard, as compared to 3.5 percent for the nation. Recitation of socioeconomic statistics reveals little and probably tends to obscure the real issues. Federal officials are often blinded by these indicators, and their response is to design bigger and better welfare programs to serve Navajo people. Of course, this in turn has created more employment for federal bureaucrats who must administer these programs. Eventually, it is in the bureaucrats' self-interest to keep their client population poor, dependent, and powerless, which explains why reform is so difficult and the current federal policy of self-determination a failure. More serious, however, is the fact that since so much money and effort is being spent on treating symptoms, no one has time to examine the causes of poverty.

Increase in federal programs in the past decades has strained Navajo management capabilities to the point that the Navajo government is unable to run these programs properly let alone initiate its own development programs. The "War on Poverty" greatly increased the flow of federal transfer payments to the Navajo reservation. However, since there is no coordination of Indian programs among federal agencies and little effort to study their impact, it is even difficult to calculate accurately a total for such aid. The following table represents a compilation done by Ernst and Ernst Consultants of federal aid for 1972.[11]

TABLE 1

Federal Aid Programs
(FY 1972)

Agency	*Amount*
U.S. Department of Agriculture	$ 375,000
U.S. Department of Commerce	3,711,000
U.S. Department of Health, Education, Welfare	47,858,000
U.S. Department of Housing and Urban Development	25,000,000
U.S. Department of Justice	50,000
U.S. Department of Labor	6,853,000
U.S. Department of Interior (includes BIA)	170,478,000
U.S. Office of Economic Opportunity	10,042,000
Total U.S. Government Aid	$264,367,000

Source: Ernst and Ernst, 1973

Not included in the table are $73 million in indirect federal assistance; $9.7 million from state agencies (Arizona and New Mexico); $4.8 million from the Four Corners Regional Commission; $7.4 million from private, religious, and charitable organizations; and $45.9 million in Navajo investment funds. Thus, contributions and investments totalled $405.1 million in 1972, or $3124 per Navajo individual.

Federal transfer payments and aid have not increased Navajo incomes to poverty levels, much less changed the structural conditions which create poverty and underdevelopment. Navajo officials have come to this conclusion:

> The uses to which the federal government has applied its funds in the Navajo Reservation constitutes another problem. Far too much has been spent on the symptoms of poverty and underdevelopment and far too little spent on the cause of poverty. The federal government has, in effect, been applying its resources to mitigating problems rather than developing solutions.[14]

Federal expenditures, however large, have little direct impact on Navajo income and employment for many reasons. First, almost 60 percent of all federal funds are spent on education, health, housing and welfare.[15] The federal government's concern is to provide for basic needs, as required under the 1868 Treaty. Relatively little or nothing is spent to develop the abundant resources in Navajo territory because federal officials have not recognized the necessity for Navajo autocentric development.

Secondly, federal dollars which are supposed to benefit Navajos are spent to purchase off-reservation goods and services. Those dollars spent on the reservation often accrue to non-Indian teachers, doctors and merchants, or if they accrue to Navajo employees, soon leak out as commodity purchases in border towns.

Though such federal expenditures are necessary and are required by treaty, such aid does not solve the problem of Navajo poverty and underdevelopment.

THE PROCESS AND STRUCTURE OF NAVAJO UNDERDEVELOPMENT

While the Navajo nation was not originally created as a resource colony, in the late twentieth century, it supplies the urban-industrial centers of the United States with raw materials. Most of the value of these resources is expropriated by large vertically integrated corporations, not only because of their monopoly power, but also because Department of Interior policies have favored corporate intrusion over Navajo use and development.

Since nearly all production in Navajo territory is for export, the Navajo nation is dependent on outside foodstuffs and manufactures. Capital outflows in the form of transfers of value and competition from imports block the development of Navajo-controlled economic activities which could fulfill local employment and consumption needs. The extreme outward orientation of the Navajo economy also inhibits internal exchange among the sectors of the Navajo economy. Pastoral production, commercial agriculture, mining, forestry, manufacturing and retail trade are not integrated among themselves, but rather each, separately, with the national economy.

Exclusive development of capital-intensive exports and the lack of internal integration have resulted in high unemployment or underemployment in federal make-work jobs. Furthermore, federal interference and the uncontrolled intrusion of mining companies have distorted the Navajo income distribution and Navajo consumption patterns.

TRADITIONAL SECTOR

The Navajo people have traditionally[16] engaged in livestock production, subsistence agriculture, weaving and jewelry production. At least 65 percent of the present potential labor force is dependent on these activities to earn part of their living, though only a tiny percent of the population relies entirely on these self-subsistent activities. The traditional mode is characterized as either land or labor intensive and is carried out with little or no capital. By allocating family labor to each of these activities, the Navajos once attained full self-sufficiency and even generated marketable surpluses.

The reservation system paradoxically preserved traditional activities while undermining their self-sufficient nature. The Navajos did not suffer from European contact to the same degree as other indigenous peoples. Peoples in Africa, Asia, Latin America and other parts of North America experienced dependency through a process of trading local products for manufactures, finally losing all their productive land for plantation agriculture. The Navajos were able to continue their traditional mode because the reservation system protected them from total dispossession and because their territory was not desirable to settlers.

Federal stock reduction in the 1930's combined with population growth lowered sheep and goats per capita from 21 in 1931 to 8 in 1940 and to 3.6 in 1974.[17] The Navajos can no longer depend solely on their flocks for support. Income from traditional activities must be supplemented by income-sharing among relatives, temporary wage work, and welfare.

Navajo agricultural self-sufficiency was also impaired by the economic penetration of their traditional economy. Trading with Indian neighbors, Spanish invaders, and Morman settlers became an established feature of Navajo life by mid-nineteenth century.[18] However, these exchanges were infrequent and in no way essential to Navajo existence. Dependency was created with Navajo captivity at Fort Sumner and Fort Defiance when they had to receive government rations and manufactures to survive. Army personnel encouraged the Navajos to bring in surplus wool to trade for extra rations. Eventually, many of the officers left government service to become full-time traders in Navajo wool. By the 1870's the Navajos were dependent on the market economy trading their blankets and wool, and later piñon nuts, lambs and jewelry for foodstuffs and manufactures. An increasing share of their products was devoted to external exchange rather than internal consumption. In the 1890's traders, interested in expanding the rug market, virtually forced upon Navajo weavers new methods, designs, and dyes by offering unheard-of prices.[19]

Transfers of value from Navajo to American society occurred through the two mechanisms of unequal exchange in trade and unequal trade. Given that capital endowments differed between the two societies, labor productivities and wages were unequal. A large Navajo rug, which embodied months of continuous labor of herding and shearing sheep, sorting, washing, drying, dyeing, carding, spinning and weaving wool, was exchanged for manufactured items which embodied many fewer hours of labor. The size of the transfer from unequal exchange could be calculated by estimating what it would have cost the developed society to produce the traditional product, compared with what it actually paid for it.[20]

Since the early traders were given a virtual monopoly over Navajo trade and the two societies were unaware of the actual cost of production of the goods they exchanged, the traders were able to realize huge profits by engaging in unequal trade.[21] For example, they sold manufactures dear to local Navajos by giving them as little as possible in return for their rugs and wool. These items were then sold for high prices in eastern markets. However, the profitability of the traders' two-way commodity trade was diminished by the collapse of the rug market prior to World War I, and by erratic fluctuations in wool prices as well as a decline in wool consumption.[22]

Following this bust, the traders then had to make their profits from a high markup on their retail items. In the 1950's, markups ranged from 35 percent for groceries to 75 percent for dry goods; 100 percent for hardware and 100–200 percent for drugs. In 1970 some young Navajos surveyed grocery prices and discovered markups of 30–120 percent. A recent Bureau of Indian Affairs survey of trading post prices revealed that there continues to be a wide range of prices for any single item and that they are considerably higher than in large retail chain stores.[23]

Traders justify their high markup on the basis of their transportation costs, credit risks,

and low volume of business. Transportation costs are considerable since supply houses are located in border towns hundreds of miles away. The extension of credit by the traders does perform the necessary function of smoothing out the seasonal fluctuations in traditional Navajos' incomes, a function that large supermarkets refuse to perform. This increases trade s' costs by 1–2 percent.[24] In addition, the traders do not enjoy any of the economies of l rge stores which buy in bulk or even manufacture their own brand lines.

Navajo capital accumulation in traditional activities is inhibited not only by unequal exchange and unequal trade, but also by the traders' practice of credit saturation. In order to insure that local Navajos shop at their trading post, traders advance credit just equal to their clients' future income in both cash and kind. Customers are encouraged to consume as much of their future income as possible in order to minimize the amount of cash they have to spend elsewhere.[25] High consumption allows little saving. Credit saturation works best under conditions of geographic isolation. Within the recent period, the traders' territorial monopolies have been eroded by the increased mobility of Navajo people. Traders now capture a smaller fraction of community income. Moreover the basis on which they extended credit is rapidly disappearing. Rugs were nearly eliminated prior to World War I. Wool is now handled by a Navajo marketing program. Welfare, railroad and social security checks may be received and cashed at other locations. Lambs can be sold elsewhere. Most traders' leases expire between 1980 and 1990, and it is very likely that since the opportunity for monopoly profits has disappeared they will cease operations.

The demise of the trader does not mean the end of unequal exchange or unequal trade in the traditional sector. Navajo livestock products, even if marketed by the Navajo government, would still be subject to unequal exchange because of persistent differences in labor productivity. Unequal trade would be perpetuated through the discriminatory retail practices of border town merchants.

While the federal government has been preoccupied with the declining productivity of the Navajo range, it has not undertaken any program capable of retarding erosion or restoring the land. Both lack of funds and bitter memories from the 1934 stock reduction program explain federal inaction. A cost-benefit analysis might reveal that after so many years of continued overuse, the costs would be prohibitive. However, the federal and Navajo governments' cost-benefit calculations would most likely omit the social benefits accruing to traditional Navajos.

The Navajo government has neglected any meaningful development of the traditional sector because it believes that the operational difficulties in a range improvement program are almost insurmountable[26] and because it is biased in favor of creating modern capital-intensive enterprises. This attitude disregards the fact that traditional activities provide important supplemental income for the 27,366 able-bodied adults and their dependents, who cannot find wage work and the 13,311 who are underemployed.

Lack of investment in the traditional sector condemns it to even lower levels of productivity. Average annual income per sheep was about $8 in 1971. While all Navajo people cannot return to a range-based self-sufficiency, productivity and income in livestock could be increased by range improvement, education in livestock practices, improved feed grains, lamb and calf feedlots, livestock marketing programs and consumer credit. Since traditional activities suffer from such low status in the minds of Navajo officials, no attempt has been made to start processing industries or to integrate these activities into the Navajo economy. Wool, meat, and hides are either consumed directly by families or exported in their crude form allowing others to reap the gains from value-added.

Within the traditional sector many mechanisms are at work which produce underdevelopment. Both population pressure and capitalist penetration have impaired the self-sufficiency of traditional activities. The bulk of traditional products are exchanged for

outside foodstuffs and manufactures on highly unfavorable terms. Linkages with other sectors and processing remain undeveloped because of the lack of federal or Navajo governmental interest in traditional activities.

CAPITALIST SECTOR

Productive activities in the capitalist sector of the Navajo economy use the same technology, have similar capital-labor ratios, and pay the same wages as the identical activities in the national economy. The capitalist sector includes mining, timber, commercial agriculture and manufacturing. Unlike the traditional sector, the capitalist sector is controlled and operated by non-Indian, using Navajo labor. Outside interests provide the investment capital, manage daily operations, and expropriate most of the value-added. The activities are almost exclusively primary. There is no processing of Navajo oil, gas or uranium on the reservation though Navajo coal is converted by non-Indian utilities into electricity to be resold to the Navajo nation as well as to nearby urban populations. The exception to this general pattern is timber which is owned, operated and processed by the Navajo government.

The bulk of primary activities consist of the extraction of nonrenewable minerals. The rate and manner of extraction are based entirely on corporate or national needs. Since the corporate operators expropriate the resource rents,[27] the Navajos are deprived of the means of reconstitution of their capital stock for the use of future generations.

Navajo territory possesses proven reserves of oil, gas, coal and uranium. The development of such resources is remarkably similar whether the resources are located in the Navajo Black Mesa, Zaire or Papua-New Guinea. Their extraction is shaped by a unique set of conditions. First, there exists much uncertainty regarding the resources' supply and demand. Secondly, given the current technology, huge amounts of capital are needed to explore, extract and process these minerals. Thirdly, governments have perceived that these resources are vital to their national security, so the existence of these special conditions has resulted in a noncompetitive solution to the development of the resources.[28]

There is little competition among producers and they influence price and rate of output. Exploitation has been almost exclusively by large, vertically integrated transnational corporations (TNCs) who are covertly supported by their home governments. Historically, these corporations have consolidated their positions by hoarding deposits, limiting diffusion of technology, and by establishing exclusive marketing networks.[29]

While the Navajo nation owns its minerals, it does not control their development. Navajo resources are managed by the Bureau of Indian Affairs. Like most caretaker governments, the Bureau has not endeavored to obtain the most favorable contract terms even though, as trustee, it is obligated to maximize Indian mineral revenues. Having ultimate control, the Bureau has persistently favored one method of exploiting Navajo mineral resources, that is, to lease them to non-Indian corporations.

The choice of leasing is easily explained. Federal officials have always found it difficult to distinguish between Indian resources and public resources. Therefore, Bureau officials have adopted procedures similar to the ones used for the public domain. It is common knowledge that federal leasing programs have resulted in speculation, lease concentration, loss of fair market value, and environmental degradation.[30] Leasing on the public domain may be done on either a competitive or noncompetitive basis. However, approximately half of federal coal leases were issued by noncompetitive methods.[31] Lack of competition has had a depressing effect on bid prices. While Indian lands must be leased competitively, the small number of bidders and depressed prices for public lands have dampened Indian prices.[32]

Consequently, the contracts the Bureau of Indian Affairs has concluded, whether by competitive bidding or by negotiation are among the worst ever made. Except for oil, the royalty[33] rates were usually fixed in dollars per unit of the mineral produced rather than being a percentage of the value of production. Such royalties allow the mineral producers to capture most of the resource rent as well as appropriate any increase in the value of the nonrenewable resource. For example, in four out of five Navajo coal leases awarded between 1957 and 1965, the royalty was fixed between 15 cents and 37½ cents per ton. Coal, at that time, sold to utilities for $5 to $10 a ton, and the costs of strip mining were approximately $3 a ton. Thus, resource rents range from 40 percent to 70 percent of the value of sales. Electricity then made from a ton of coal brought $150 to $200 when sold to utility customers.[34] It is not possible to change these low royalty rates because there are no specific readjustment clauses in the leases.

In addition to these defects, the leases contain provisions for environmental protection and preference for Indian hiring which are wholly inadequate. These provisions are so vaguely worded that they are not enforceable in court. More serious still, some leases contain waivers from Navajo government taxation. Thus, the Navajo government signed away one method for adjusting low royalties, that is, by imposing taxes.

Federal leasing policies and monopolistic industry structure provide only a partial explanation for the present poor contract terms and the continued inability to obtain better ones. Navajo bargaining power vis-a-vis large mineral corporations is weakened by a number of other factors.[35] Both the Navajo government and the Bureau of Indian Affairs officials lack adequate information about the extent of the mineral deposits, the costs of exploration and production, and market prices. It is impossible, without such information, to determine the value of what Navajos own. The Bureau has never obtained a complete topographic mapping or geologic mapping of the Navajo reservation, though the Navajo government, at its own expense, did conduct a study of potential oil and gas reserves. The United States Geological Service (USGS) is supposed to advise the Bureau of Indian Affairs on lease provisions. Without accurate surveys, it is difficult to see how they can provide such advice.

The Bureau of Indian Affairs lacks not only adequate mineral inventories but also the personnel with the necessary expertise to conduct contract negotiations. The BIA Navajo Area Office did not employ one geologist or mining engineer, nor does there exist a procedure for BIA personnel to exchange information with other BIA officials who are conducting similar negotiations. The Washington, D.C. office of the BIA has actually opposed the exchange of information, claiming that "tribes may believe that what has been obtained on one reservation could be obtained on their reservation without giving consideration to differing circumstances . . . also (it would be) difficult and expensive to establish such a system."[36]

Indian government bargaining power is greatly reduced by delays in obtaining Secretary of Interior approval. For example in January 1973, the Navajo government sent out 25 invitations for bids for uranium exploration. By January 1974, the Navajos had determined that Exxon had made the best offer even though the terms were not in the Navajo nation's best interest. The Secretary of Interior delayed three years in granting approval, until January 1977. The delay cost the Navajos $1,642,500 in foregone interest on the $6 million bid price paid by Exxon but held in escrow until the lease was approved.

The Bureau of Indian Affairs and the Navajo government's bargaining position is further weakened by the "national energy crisis." Both are pressured to develop the resources rapidly without regard to the long-range interest of the Navajos.

Another factor which affects Navajo bargaining power and income is state taxation of non-Navajo mineral developers. The surrounding states currently collect about $59 million

in annual taxes from energy producers while the Navajo nation receives only $15 million.[37] Since the resource owner is immobile and the developers are mobile they can pass along the state tax by lowering royalties, bonuses, and rents. Certainly, during bidding or negotiation the developers include state taxation when calculating their probable profit position. The larger the tax, the less they pay to Navajo owners. A state tax on mineral developers can be regarded as a tax on Navajos no matter who in fact pays the tax. Peter MacDonald, Chairman of the Navajos, has called this the "legal theft" of Navajo resources.[38]

Navajo government bargaining power is also diminished by opposition from traditional Navajos to continued mineral development. Many traditional and young Navajos are concerned about the irreversible damage which mining inflicts on their culture, livelihood, health, and environment. Local communities have not been compensated for the economic, social and environmental disruption caused by the past and present mining activities. For example, it is predicted that one out of six uranium miners employed in the 1950's and 1960's will die as a result to exposure to radiation, but their families will receive no compensation.[39]

Finally, the Navajo bargaining position is weakened by the fact that mineral revenues constitute the largest single source of the Navajo nation's revenue. From 1958 to 1975, from 28 percent to 93 percent of Navajo revenues were derived from mineral leasing.

TABLE 2

Navajo Nation Revenues and % Derived from Mineral Leasing

Year	*Navajo Nation Revenues*	*% from Leasing*
1958	$30,629,792	93%
1959	19,540,713	85
1960	18,536,800	79
1961	20,058,220	82
1962	16,912,904	77
1963	18,036,182	76
1964	34,030,227	88
1965	17,960,805	77
1966	12,811,958	65
1967	13,253,804	62
1968	16,333,341	69
1969	16,526,743	62
1970	19,043,792	42
1971	26,316,176	28
1972	19,561,915	41
1973	26,316,176	28
1974	20,583,981	49
1975	27,549,392	70

Source: Michael Benson, *The Navajo Nation and Taxation* (Window Rock, Navajo Nation: DNA People's Legal Services, 1976) pp. 51–52.

The Navajo government is not in a position to cancel leases or refuse to negotiate new leases if it wants to maintain its administrative and service functions. Most Navajo government expenditures are for administrative and social services. Very little, if any, mineral revenues are invested in productive activities. The Navajo nation has been accused

of economic cannibalism because the present generation is consuming capital assets. If these capital assets, the mineral deposits, were left unexploited or if mineral revenues were invested in productive enterprise, the future generation would be assured of an income stream instead of an emptry hole.

Federal leasing policies, industry structure, lack of information and expertise, Interior approval powers, the national energy "crisis," state taxation, Navajo opposition to mining and dependence on mineral revenues have all combined to weaken the Navajo government's bargaining position. As a result of its weak bargaining power, the Navajo nation receives a very small share of the market value of its minerals. The following table analyzes the 1975 returns from oil, gas, and coal leases that were in production.

TABLE 3

Navajo Returns From Navajo Mineral Production, 1975

Mineral	*Production*	*Royalties and Rents*	*Per Unit Return*	*Market* Price Per Unit*	*Return as a % of Market Price*
Oil	10,225,707 barrels	$11,555,783	$1.130	$8.30	14%
Gas	6,198,007 cub. ft.	465,224	.080	.40	20
Liquid Products	24,477,579 cub. ft.	84,269	.003	–	–
Coal	13,219,696 tons	2,290,584	.173	7.63	2

Sources: W. Armstrong, "Navajo Minerals Development 1966–85," (Window Rock: Navajo Nation Office of Minerals Development, June 1976); C. Kolstad, *The 1975 Energy Production System in the States of the Rocky Mountain Region* (Berkeley: University of California Los Alamos Scientific Laboratory, December 1976).

*Market price at the well head or mine in N.M.

Energy resource experts argue that such low royalty rates are better explained by the fact that all fuels were in excess supply from 1925 through 1970. If this is so, Navajo resource owners were in a weak bargaining position also because of excess supply. What is at issue, however, is that Navajo owners, unlike Third World countries which are resource rich, have not been able to improve the terms of mineral agreements even after the energy crisis. Not only are the returns a small fraction of market prices, but there is doubt whether the actual amount produced is reported correctly and if the royalty is actually paid. The Bureau of Indian Affairs does not verify the companies' production records or insure that the royalty is paid on time. In 1975, the comptroller of the Navajo government investigated the United States Geological Service in Roswell, N.M. and found various companies in arrears.

The foregoing analysis reveals that massive transfers of value are occurring in the mineral sector of the Navajo economy. Mining companies and states expropriate through low royalties and taxes most of the value of the minerals.

STRATEGIES FOR DEVELOPMENT

The Navajo nation is acutely aware that its capital assets are being siphoned off by the urban-industrial centers of the United States. It is attempting to increase its share of mineral revenues by renegotiation of inequitable leases, by taxation, and by using new forms of agreements in future negotiations.

Renegotiation of contracts has proved difficult because the leases contain no readjustment clauses and the Navajo government cannot unilaterally cancel the leases legally. The Navajo nation has been able to pressure only a few energy corporations to renegotiate.[40] Most transnational corporations take refuge in the outmoded concept of sanctity of contract, even though they readily accept the renegotiation of their long-term international mineral agreements.[41]

Since the Navajo government has been unable to renegotiate inequitable terms, it is attempting to tax mineral producers. On the advice of its tax commission, the Navajo Council passed a possessory interest tax (leasehold tax) and a business activity tax (value-added tax). The commission did not specify what percent of the resource rent would be captured when these taxes are levied on utilities or mining companies. The Navajo government estimates it will collect $26 million.[42]

The council also adopted a sulfur emissions penalty ordinance modelled after the "polluter pays" principle.[43] At the estimated level of 230 million pounds of pollutants emitted annually from plants in the Navajo reservation, the Navajo government would collect approximately $34 million the first year.[44]

The ordinance and taxes have been bitterly contested by the energy producers even though it is in their interest to pay the lower Navajo taxes rather than the higher state taxes. In April, 1978, a Phoenix federal district judge, William Copple, upheld the right of the Navajo government to impose the possessory interest tax. He ruled that the Navajo nation is a sovereign entity and that "Taxation is an inherent attribute of tribal sovereignty." However, he did not rule on the legality of the tax, saying that the Secretary of the Interior should decide if tax waivers in the leases made the tax illegal. If the secretary rules in favor of the Navajos, the energy companies will carry the battle to the Supreme Court where the Navajos might not receive such favorable treatment as in the lower court.[45]

For future development the Navajos are considering new forms of agreements. They explored joint ventures in the new Exxon uranium contract, the El Paso renegotiation, and in the Kerr-McGee uranium negotiations. However, the terms they were offered were far from favorable. The Department of Interior analysis of contract terms was limited almost exclusively to their financial results. It accepted the terms as given and did not examine them on the basis of other more innovative contracts. In all three joint venture proposals, the Navajo government was asked to contribute to development costs notwithstanding that it is the resource owner. There is no reason why the Navajo government should have to contribute capital. Some Navajo development experts and international lawyers feel that the Navajo equity should be equal to the value of the resource.[46]

In the Exxon contract, the Navajo government must choose among a percentage royalty, a 49-percent working interest, or a 49-percent nonworking interest. If they choose the latter, Exxon is entitled to recover all the development costs and operating costs before the Navajos receive any substantial share of the profits. What will be Exxon's equity share and justification for 51 percent of the profits if it recovers all capital? Often corporations are permitted accelerated depreciation in order to recover their investment rapidly under conditions of extreme uncertainty, usually political uncertainty. Such uncertainty does not exist in the Navajo case.

The agreements do not provide for a corporate structure which would allow Navajos to participate in decision making. Consequently, there is no way Navajos will be able to control costs or insure that profits are maximized. Where the partner is to process and market the product, there is no guarantee that the Navajos will receive the market price. In the Kerr-McGee proposal, taxes are to be deducted before the sharing of profits even though the Navajos are exempt from taxes. There are also no provisions for the

maintenance and inspection of books. Finally, it appears that the Navajo government would have little control over the rate of production nor the technology.

Unfortunately, Navajo officials have been considering corporate-proposed joint ventures almost exclusively. There is little discussion of the benefits from new, modernized concessions such as the Bougainville in Papua-New Guinea, or from production sharing as practiced in Peru and Indonesia or management contracts such as Cerro Colorado in Panama, or service contracts such as Sar Chesmeh in Iran.[47]

Unlike the nonrenewable resources, timber and agricultural land are being developed by the Navajo nation. Timber is being exploited by a vertically integrated Navajo enterprise, the Navajo Forest Products Industries (NFPI). Navajo agricultural land is in its initial stages of development with 20,000 of a potential 110,000 acres in production. It is under the management of another Navajo government enterprise, the Navajo Agricultural Products Industry.

While the Navajo nation was originally entitled to 50,000 acre-feet of water from the Colorado River and 508,000 acre-feet from the San Juan River, it has either signed off its rights to energy producers or found them difficult to enforce against state and federal encroachment.

As early as 1888 a sawmill was built to exploit the timber resources which include 439,402 acres of ponderosa pine.[48] In 1958, NFPI was created to manage this resource. It began a process of vertical integration to control all phases of lumber production. In 1962 it built a modern sawmill which includes a bark processing plant, a millwork, and a cutstock plant. NFPI has expanded several times and it even spawned the creation of the new town of Navajo. The latest addition was a $5 million particle-board plant which enables NFPI to make use of its waste products. The managers plan to diversify into furniture making in the near future. Capital assets total $25 million.

The chief advantage of NFPI is that it has allowed the Navajo nation to capture the value-added in processing its timber rather than merely selling it as stumpage. For example, in 1974, 42,000 million board feet of timber were harvested and the Navajo government received $2.8 million in stumpage payments. This was then processed by NFPI and sold for $10.5 million. The difference between sales and stumpage is the value-added from processing.

The NFPI mill paid $3 million in wages and earned $2.9 million in profits which it reinvested. Employment grows steadily and in 1977 NFPI provided jobs for 614 Navajos. The economic gains, instead of drains, are the direct result of Navajo control and vertical integration.

The fact that the Navajo nation has been able to control and develop its timber resources, unlike other sectors, is explained by several factors. First, the capital investment was modest, only $8.5 million in Navajo funds for the sawmill; $5 million from the Economic Development Agency for the particle-board plant. Secondly, and probably most important, NFPI is a small operation and did not provoke opposition from the giants of the lumber industry.[49] In fact many of them even provided technical assistance. Third, the Navajo government was able to hire technical experts who keep the plant on a steady expansion path.

While no massive transfers of value are taking place in the Navajo timber industry, it is true that its production again serves the needs of the urban-industrial centers. Very little use is made of Navajo-produced timber within the Navajo economy even though there has been considerable activity in housing construction. There have been suggestions that prefabricated housing be constructed from lumber Navajos produce, but there has been no real Navajo government commitment to develop this linkage.

The Navajo nation has waited for more than one hundred years for the fulfillment of

federal promises to develop commercial agricultural land. Such development is contingent upon a federal project authorized in 1962 which would divert water from the San Juan River to irrigate 110,000 acres of desert land. Navajo access to water has been thwarted by lack of congressional appropriations. When the growing city of Albuquerque needed water from the San Juan, the necessary funds were quickly appropriated to build the facilities. Work on the Navajo Agricultural Products Industry (NAPI) proceeded at a snail's pace for the first ten years. In 1971, a new Navajo government brought pressure on New Mexico's congressional delegation and appropriations were forthcoming.[50]

The first 10,000 acres of land received water in 1976. Another 10,000 acres are to be added each year until 110,000 acres are developed, but it is questionable if the Navajo government will be able to secure the water, capital, and technical assistance to successfully complete a project of this size without aid.

While the Navajo nation has legal rights to 508,000 acre-feet of water, the Bureau of Reclamation is attempting to limit them to 226,000 acre-feet, in order to provide more water for non-Navajo industrial users. If limited to this amount, which has not been proven sufficient for this particular project, the Navajos will be left without water for processing foodstuffs. Thus they would forego significant value-added from their agricultural products.

Planning the development of the project has rested until the mid-1970's in the hands of the Bureau of Indian Affairs. Original BIA plans envisioned 1200 family farms providing employment for 9000 Navajos.[51] Family farms were compatible with the ideal of promoting individual self-sufficiency. However, in the mid-1960's BIA officials began to have doubts about the compatibility of agriculture and Navajo culture. On the advice of New Mexico State University (Las Cruces) agronomists, the family-farm design was changed to a single large-scale Navajo government enterprise which would produce profitable cash crops. Estimates for financing such a project range from $268 to $400 million. New Mexico State University advisors recommended cash crops, not only because of their bias for profit maximization but also because of the pressing need to generate a high cash flow to finance project operations. The new design would employ 6000 workers, ten percent of whom would need university degrees. The difficulty of financing and managing such a project almost insures it will fall under the control of a California transnational food corporation. On March 15, 1978, the Navajo government announced it was considering proposals from three corporations for the management of NAPI.

The emphasis on cash crops will only increase Navajo dependency. As in the other sectors, all production is geared to meet outside needs. There is no thought of making the Navajo nation self-sufficient in foodstuffs. The project could become another example of a protein-deficit area exporting protein. The current Navajo diet consists of sugar, white flour, beef, coffee, snack or junk food, mutton, soda pop, evaporated milk, and alcohol. To upgrade the Navajo diet, local health authorities recommend cooperative truck gardens rather than another federal feeding program.[52] However, such local needs have not been taken into account by the expert project designers.

The project also suffers from the fact that there are few linkages planned with the rest of the economy. The project provides an excellent opportunity to increase the productivity in the traditional sector through extension services, lamb feedlots, and marketing services internally. Unfortunately, these aspects are not part of the project's plans.

The manufacturing sector in the Navajo reservation began in 1955 when the Bureau of Indian Affairs initiated a program to attract footloose industry. The objective was not to develop self-sufficiency, but to provide jobs. Non-Indian industries were offered various incentives to locate on the reservation with subsidized wages for the employees, free land, plants and equipment. In return the industries were supposed to supply working capital and management. A 1971 analysis of this program, it was found that one in five firms failed because of inexperienced management and lack of capital.[53] Three years later it was found

that the plants employed more non-Indians (9,390 for all Indian reservations, than Indians (6,173), thereby completely defeating the purpose of the program.[54]

In 1966 the Economic Development Administration (EDA) reinforced the Bureau's effort to industrialize the reservations by providing funds for water and sewer development, industrial parks, business loans, planning and technical assistance.

After an eleven-year effort, EDA and the Navajo government had been able to attract only one permanent footloose industry, General Dynamics. Four others have come and gone—Fairchild Semiconductor, Navajo Trailer, Silver Fox Dessicants, and Hewlett Packard. The history of the entry and exit of Fairchild Semiconductor illustrates the futility of trying to attract non-Navajo industry. EDA and the Navajo government provided facilities for Fairchild at the cost of $3,301,267. The Navajo interest payments on business loans from EDA and foregone interest on Navajo funds exceeded Fairchild's rental payments, but in the beginning Fairchild employed 1200 Navajos with an annual wage bill of $6 million. In 1975, Fairchild reduced the labor force, the plant was occupied, and Fairchild closed down the operation immediately, breaking its lease.

The Fairchild operation was a labor-intensive electronics assembly plant, the type that has found lucrative havens in South Korea, Hong Kong, Singapore and Taiwan. In transferring operations to the Far East, the runaway firms take advantage of Asian labor which is more profitable, being twenty times cheaper than in the United States.[55] The Navajo nation, even with its extreme poverty, cannot compete with Asian underdevelopment despite wage and infrastructure subsidies for the companies. Thus, the Navajo nation is one of the victims of the new international division of labor.

The most important characteristic of assembly ooperations is their extreme mobility. They are able to transfer investments to another country because of the limited amount of fixed assets required for production. Cases are known in Asia of plants transferring production more than once so the host country is left only with the decision to admit or exclude the foreign operation, not to bargain for terms. Similarly, the Navajos found they had no control over Fairchild's decision to shut down even though they had their scarce funds tied up in the building and equipment.

Another characteristic which contributes to the instability of assembly operations is that the plants do not use local resources, except labor, or depend on local markets. EDA examined the characteristics of plants that fail. They found the lowest failure rate among Indian-owned resource-based industries. Indian government planners now realize that footloose industry is not a possibility, not only because it is incapable of serving Indian needs, but also because it does not even serve the needs of the transnational corporations.

The service sector of the Navajo economy further indicates underdevelopment. Retail services are sparse and are usually controlled by non-Navajos. While the population density of the Navajo reservation is twice that of the adjacent rural area, commercial establishments are fewer for the Navajos.

TABLE 4

Population Per Business

Area	*Retail*	*Wholesale*	*Service*
Navajo Reservation	616	105,291	3,290
McKinley County	125	1,328	285
San Juan County	116	527	161
Apache County	274	3,750	608
Coconino County	102	801	138
Navajo County	109	1,253	215

Source: Keith Gilbreath, *Red Capitalism* (Norman: Univ. of Okla., 1973), p. 25.

TABLE 5

Commercial Businesses by Type and Ownership, 1970

Kind of Business	*Total*	*Navajo Owned*	*Non-Navajo*	*Mixed*
Total Retail Stores	171	89	125	2
General Merchandise	100	18	81	1
Food	2	2	0	0
Auto dealers	4	0	4	0
Gas Stations	42	24	18	0
Clothing	1	1	0	0
Furniture	2	1	1	0
Cafes	16	9	7	0
Miscellaneous	4	1	2	1
Wholesale Store	1	1	0	0
Lumber and Construction	1	1	0	0
Service	24	12	12	0
Hotels, motels	13	5	8	0
Personal	5	3	2	0
Auto Repairs	4	3	1	0
Cinema	1	0	1	0
Bowling, Billiards	1	1	0	0

Source: Gilbreath (1973) pp. 12–13

The lack of commercial establishments could be explained in previous years by the traders' territorial monopolies. Now commercial development is limited by competition from bordertown merchants. It is estimated that 50 percent of all Navajo purchases are made off the reservation.[56] Navajos leave the reservation in search of lower prices, greater variety, or just the change of going to town. Many consumer durables are simply not available on the reservation and there are almost no recreational facilities.[57] There is no linkage between the retail sector and Navajo productive activities. Most goods sold in the reservation are imported from border towns.

The existence of a stunted retail sector side by side with a bloated public service sector is typical of some underdeveloped economies. Most Third World countries have experienced a rapid increase in the public service sector after independence. In Tanzania and Zambia (Africa), the number of civil servants more than doubled in the first five years after independence.[58] Such growth is attributed to the need to replace colonial administrators and to provide services not previously available under the colonial regime.

The Navajo public service sector has been growing steadily, as a result of the need to provide an expanding array of social services. Navajo government employees earn considerably more than the average Navajo worker, and 60 percent of the Navajo government budget is for salaries. Between 1975 and 1976, Navajo government employment doubled, going from 3,430 employees to 6,715, largely as a result of the Comprehensive Training and Unemployment Act (CETA), a federal program. CETA is the most recent example of the federal attempt to "perk up" stagnant, underdeveloped Indian economies with make-work programs. Ironically, the annual Navajo CETA budget exceeds Navajo resource revenues.

Between 1975 and 1976, approximately 2,800 Navajos entered the labor force, an increase of 5 percent. Total unemployment and underemployment was 66.9 percent in

1975.[59] The capitalist sectors of the Navajo economy were clearly unable to absorb this increase in the labor force or the large number of under and unemployed because of their capital-intensive nature or because of slow or negative growth. The nonrenewable resource sector provided jobs for less than 5 percent of the Navajo labor force. Employment remains low because extractive activities are capital-intensive and there is little vertical integration in the reservation economy.

The rapid expansion of commercial agriculture is hampered by insufficient capital and managerial skills. The forest-products industry, though expanding continuously, is a small operation and cannot provide enough jobs for the growing labor force. Manufacturing activities have declined drastically due to reliance on footloose industry, and processing industries using local resources remain undeveloped. Construction at its peak never employed more than 5.0 percent of the Navajo labor force. Wholesale and retail trade are undeveloped due to competition from border towns.

As a result of stagnation in the capitalist sectors, the public sector has become the catchall for the growing labor force. Seventy-five out of every hundred Navajos with jobs are employed in public service. Service industries distribute what is already produced but they do not add to Navajo supply of material goods. What is particularly alarming about the large number of Navajos in service employment is that these jobs are dependent on federal funding which is a most unstable source. While federal make-work programs, such as CETA, ameliorate individual deprivation, they also increase Navajo dependency.

GROWING INEQUALITIES

While income disparities have existed among the Navajo people since the time they acquired livestock, these disparities are rapidly increasing. The lowest quartile of the Navajo population receives only 1.7 percent of the total income while the highest quartile receives 53.1 percent of the total. The growing disparity is a direct result of the high salaries earned by Navajo employees and the recent labor aristocracy in the mining, timber, and construction sectors. The Navajo government feels that in order to retain competent employees, it must pay competition wages. Since mining, timber and construction activities have the same capital-labor ratios as their off-reservation counterparts and are covered by union agreements, workers receive competitive wages. Miners receive $30,000 per annum (1978) as compared with the average per capita income of $900 or the average family income of $4000.[60]

Such well-paid workers constitute a potential polarizing force in Navajo society. They, along with Navajo government employees, have a vested interest in continued mineral development. If the Navajo people decide to slow down, cease, or change the manner of exploitation, they will have to overcome the opposition of this local elite.

The argument has been made that high wages also restrict employment, the building of adequate housing, and the formation of savings institutions. The former director of Navajo Housing objected to the Navajo labor relations policy obligating housing contractors to become signatory to the union before working on the reservation. Forcing contractors to use union labor and pay union rates limits the number of houses which can be built and ultimately, the number of Navajos hired.[61] The Navajo Savings Branch of First Federal Savings closed its doors because high labor costs prevented the building of moderately priced homes.[62] In defense of the high wage policy, the Director of Labor Relations argued that nonlabor costs were driving up the price of construction. He stated that the bank wants to "pay the market price for everything (else) but they don't want to pay market cost for labor."[63] However, the national index for union hourly wages has risen more readily than the national index for wholesale prices of construction materials.[64]

Navajo leaders defend the high wage policy because they want to avoid "sweatshop labor." However, their insistence on union wages diminishes the number of available jobs and creates a local elite. Sweatshop labor could be avoided by simply establishing a Navajo minimum wage, that is, a wage which could enable a worker to enjoy a decent standard of living consistent with Navajo culture. It would be necessary to pay union wages only in certain export or non-Navajo activities to prevent non-Navajo employers from capturing the difference between the higher union wage and the lower minimum wage. In such cases, the Navajo government could levy payroll taxes on union salaries in order to equalize Navajo incomes. The tax proceeds could be deposited in a fund to create more employment. Some might argue that payroll taxes could cause skilled Navajos to migrate. However, studies show that Navajos prefer to live on the reservation with a lower salary than off the reservation with a higher one. Finally, high wages are a poor use of scarce capital and put a burden on infrastructure as everyone migrates to the source of high wages.

TABLE 6

Distribution of the Employed Navajo Labor Force %

Sector	*1969*	*1975*	*1977*
Agriculture (Commercial)	.00	1.03	1.22
Mining	1.94	5.16	4.76
Forestry	5.71	3.81	3.08
Manufacturing	17.73	2.39	1.09
Construction	.07	5.60	1.90
Transportation, Communication, Utilities	3.63	6.00	5.55
Wholesale and Retail Trade	3.76	7.31	6.51
Finance, Insurance, Real Estate	.38	.59	
Services	1.98	1.85	75.8
Government	64.83	66.25	

Sources: *Navajo Employer Demand Survey* (Arizona State Employment Service, 1969) pp. 14–17; OEDP, 1975, pp. 53–54; OEDP, 1977, pp. 20–21 with a special adjustment for wholesale and retail trade.

TABLE 7

Navajo Union Membership: Summer 1977
(25% of Total Employed Navajos)

Union	*Navajo Membership*
Operating Engineers	450
Building Crafts and Skills Union	2,000 (includes 500 trainees and 150 apprentices)
United Mine Workers	950
Laborers Union	1,600
Railway Workers	1,600
TOTAL	6,600

Source: Lynn A. Robbins, "Navajo Labor," in *The Journal of Ethnic Studies* (Fall 1978) pp. 97–111. Figures are estimates from the Office of Navajo Labor Relations.

FUTURE OF NAVAJO DEVELOPMENT

Federal interference and monopoly power have caused massive transfers of value and underdevelopment of the Navajo economy. The economic subordination of the Navajo economy reveals itself in the dominance of expert activities, in the lack of internal integration, in the neglect of the traditional sector, and the growing income inequalities.

Transnational corporations and the states, like the turn-of-the-century traders, expropriate, through low royalties or taxes, most of the value of Navajo resources. Mineral activities are well developed by energy companies to supply urban-industrial centers, while 50 percent of Navajo homes are without electricity. Timber products are marketed in 25 states. Yet there is a Navajo housing deficit of 13,000 units. Development plans for commercial agriculture call for raising profitable export crops despite the fact that Navajo lives are shortened by 25 years due to poor diet.

The outward orientation of Navajo activities, their control by non-Indians, and the siphoning off of Navajo wealth have prevented linkages among the various sectors as well as the processing of Navajo resources. Extraversion and loss of wealth also inhibit investment in the traditional sector where there are ample opportunities for developing linkages and processing activities. The capital-intensive nature of extractive activities and the absence of any other internal development have forced the Navajo people into public service employment. Technological dualism between the traditional and capitalist sectors is creating a small local elite whose economic interests are closely allied with non-Indian developers.

The reversal of the massive transfers of value and the development of the Navajo economy demand both a well-articulated development strategy and certain structural changes.

While Navajo officials talk about self-sufficiency, they have not designed a comprehensive development strategy capable of achieving such an objective. Instead, the current development drive is a mix of fragmented efforts aimed at duplicating the material living standards of the American middle class. Many developing countries have consciously rejected western-style growth which implies rapid industrialization and urbanization and are attempting to satisfy the basic needs of the present and future generations without destroying their cultures and environment. Tanzania, for example, has adopted a policy of self-reliance in order to achieve self-sufficiency in food, clothing and housing. A self-reliant strategy requires independent decision making, a belief in one's own culture, and control and use of indigenous resources.

While such a strategy may not result in complete self-sufficiency for the Navajo nation because of its small size and population, it can go a long way toward decreasing its dependence and underdevelopment. With only 160,000 population, the Navajo nation does not have an adequately sized market to support most productive activities. Therefore, many of the present and future resource-based activities must sell in regional or national markets. This implies that Navajo government industries must be cost competitive, though they may settle for lower profit margins in order to achieve employment goals. What the Navajo nation must do to create structural changes in the underdevelopment economy is to scrutinize each productive activity to see that it provides for both local and outside needs. If the Navajo nation advocates self-sufficiency, then those activities which fulfill both internal and external needs should have priority over those which fulfill purely external needs.

To implement a strategy of self-reliance, the Navajo nation must regain control over its mineral resources by taxation, renegotiation or cancellation of inequitable leases. Only then will it have investment funds to develop productive activities which are Navajo controlled and based on local resources.

The Navajo nation can control exploitation of its mineral resources by entering into service contracts or by creating a Navajo government mineral enterprise. Under a service contract, a non-Indian company would explore, extract, market the mineral, as well as finance the operation. The contractor would acquire no property interest in the land or mineral, thus eliminating state taxes. The contractor would receive a fixed fee for each service or a percentage of profits to encourage efficiency. Navajo control of sales revenues and strict monitoring of costs would increase Navajo returns over those presently earned. The contractor might even pay royalties and taxes on its profits.

When the Navajo nation has enough expertise, it can form its own vertically integrated energy company to exploit and process its resources. The Navajo enterprise can be financed by cash advances from electric utilities, by production payments from commercial banks, by no-interest federal loans or guarantees, by the issue of tax-exempt bonds. Whether the Navajo nation increases its share of mineral revenues through taxation or service contracts, it must reinvest these revenues in Navajo-controlled and run productive enterprises. The traditional sector provides many opportunities for such investment. Gains from value-added can be captured by spinning raw wool into yarn, converting hides into leather, by slaughtering and packing animals.

The Navajo Council should consider changing the current design of the agricultural project to include a number of cooperatives organized around a moderate-sized Navajo government farm. The government farm can provide modern inputs for the cooperatives such as improved seeds, fertilizer, and equipment as well as technical advice and marketing services. The project could also improve productivity in the traditional sector by providing it with improved feed grains, lamb and calf feedlots, extension and marketing services.

Manufacturing activities should be organized on a Navajo government basis and should use local resources. Obvious candidates are furniture making and prefabricated housing as well as the ones already mentioned for the traditional and modern agricultural sectors. Most of these resource-based activities are relatively labor intensive. The Navajo nation should safeguard its labor-absorptive character by avoiding extremely capital-intensive operations. If Navajo government enterprises use simple but appropriate techniques, they will also conserve scarce capital. Certainly, a labor-intensive operation is preferable to none at all because the Navajo government cannot afford a more capital-intensive operation. Money alone cannot solve underdevelopment, as federal spending shows, nor should lack of it prevent a solution. Development is brought about not by money, but by people, land, good policies, and good leadership.

7. NOTES

1. R. Prebisch, *Towards a New Trade Policy for Development: Report by the Secretary General of the United Nations Conference on Trade and Development (UNCTAD)* (New York: United Nations, 1964); Andre Gunder Frank, *Capitalism and Underdevelopment in Latin America* (New York: Monthly Review Press, 1967); Samir Amin, *Unequal Development* (New York: Monthly Review Press, 1976); and Amin, *Accumulation on a World Scale*, Vol. I and II (New York: Monthly Review Press, 1974).

2. Phil Reno, *Navajo Resources and Economic Development* (Washington, D.C.: Resources for the Future, 1979). Part II.

3. David Aberle, "The Lesson of Navajo Livestock Reduction" (1978) p. 7. Unpublished manuscript in author's possession; Robert Young, "The Rise of the Navajo Tribe," in Edward Spicer, ed., *Plural Society in the Southwest* (New York: Interbook Inc., 1972) pp. 167–238.

4. For example, at the insistence of the Bureau of Reclamation, the BIA encouraged the Navajo government to sign away its rights to 50,000 acre-feet of water from the Colorado River. The BIA did not independently evaluate the impact of such a grant on Navajo needs, but instead relied on the analysis of the Bureau of Reclamation which needed the water for a power plant. See Monroe Price, "Indian Water Rights in Theory and Practice: Navajo Experience in the Colorado River Basin," in L.

Rosen, ed., *American Indians and the Law* (New Brunswick, New York: Transaction Books, 1978) p. 116.

5. The Navajos escaped allotment for a number of reasons. They were not occupying prime agricultural land, and it is possible that the protection given to Pueblo crown grants under the Treaty of Guadalupe Hidalgo between Mexico and the United States in 1848, extended to the Navajo territory. While the Navajo reservation increased in absolute size, the Navajo people were forced to cede some of their prime range and best-watered land to the Santa Fe Railroad in exchange for less desirable areas. Clyde Kluckholm and Dorothea Leighton, *The Navajo* (Cambridge: Harvard University Press, 1946; revised ed., 1962) p. 42.

6. Aberle (1978) p. 7.

7. David Aberle, "The Emergent Navajo Nation. Economic Development" (1976) p. 6. Unpublished manuscript in author's possession.

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9. Bureau of Indian Affairs, *Range Management Report: Navajo Tribe* (Washington, D.C.: United States Government Printing Office, 1974).

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12. Navajo Nation, *Financial Statements* (Window Rock: Navajo Nation, 1975).

13. Ernst and Ernst, *Federal Aid Programs* (Washington, D.C.: United States Government Printing Office, 1973).

14. Navajo Nation, *Overall Economic Development Program* (OEDP) (Window Rock, Navajo Nation: Office of Economic Development, 1977) pp. 8–9.

15. Ernst and Ernst (1973).

16. "Traditional" refers to all current economic activities which predate Navajo subjugation by the United States government. Some of these activities, such as livestock, yielded a surplus for certain periods of time. Others, such as dry farming agriculture, probably did not yield a surplus and can be considered subsistence activity. See Lamphere *supra*.

17. David Aberle, *Peyote Religion and the Navajo* (Viking Fund Publication in Anthropology, no. 421, 1963) p. 71; Bureau of Indian Affairs, *Range Management Report: Navajo Tribe* (1975).

18. Aberle (1963) p. 149.

19. Aberle (1976) p. 13; W. Y. Adams, "Shonto: A Study of the Role of the Trader in a Modern Navajo Community," *Bureau of Ethnology*, No. 186 (Washington, D.C.: 1963) p. 153.

20. Amin (1976) pp. 143–44.

21. A. De Janvry and C. Garramon, "Laws of Motion of Capital in the Center-Periphery Structure," in *Review of Radical Political Economics* (Vol. 9, no. 2, Summer 1977).

22. Adams (1963) p. 174.

23. *Ibid.*, p. 182; Keith Gilbreath, *Red Capitalism: An Analysis of the Navajo Economy* (Norman: University of Oklahoma Press, 1973) p. 28; *Navajo Times* (March 16, 1978) pp. A-10–11.

24. Adams (1963) pp. 188–94.

25. *Ibid.*, p. 170.

26. The chief operational difficulty in range improvement is local opposition to fencing the land. Fencing is essential to give a particular area sufficient time for regeneration and later to preserve it from overgrazing by nonresidence-group members. Before the human and animal population became so great, a family could move from place to place as the forage was used up and the plants had time to recover their vigor. But now when one herd leaves an area another one moves right in. Fences are needed not only to keep out neighboring herds and strays but also to allow for rotation throughout the fenced area. Local livestock owners oppose fencing because they could not expand their herds by encroaching on their neighbor's use area.

27. The term "resource rent" is defined as the value which remains after a competitive mining firm has deducted from total sales revenues, all the costs of delivering it to market: wages, depreciation, material costs, interest on capital and return for risk. The residual value or resource rent is composed of both a scarcity rent due to depletability and a differential rent due to better physical and locational characteristics. The scarcity rent is similar to and in some cases the same as the classical "economic" or "pure" rent which is the return of a resource whose supply is absolutely fixed. In the case of minerals the supply is supposedly declining but new discoveries have tended to compensate for depletions and so the supply remains constant.

28. Carlos Diaz-Alejandro, "International Markets for Exhaustive Resources, Less Developed Countries and Transnational Corporations," *Center Discussion Paper*, no. 256 (New Haven: Yale University Economic Growth Center, 1976).

29. Concentration within the energy industry is high and is increasing daily.
30. Council on Economic Priorities, *Leased and Lost* (New York: CEC, 1976).
31. Council on Economic Priorities, *Mine Control* (New York: CEC, 1978).
32. Council on Economic Priorities, *Newsletter* (November 13, 1978).
33. "Royalty" is a compensation for the mineral removed and is usually a fixed sum per ton mined or a percentage of the value of ton mined. "Rent," meaning land rent, is a fee for the use of the land during mineral exploration or extraction.
34. Reno (1978) Chapter 6.
35. Ron Trosper, "American Indian Mineral Agreements: Literature Search and Reform Proposals," for the American Indian Policy Review Commission, Task Force 7 (Reservation and Resource Development and Protection, 1976).
36. *Navajo Times* (January 27, 1977) p. 10.
37. *Ibid.*, (February 2, 1978; September 28, 1978).
38. Peter MacDonald, "An Indian View of Minerals Development on Indian Land" (Tucson, Arizona, April 1–2, 1976). Presentation to the Institute on Indian Land Development on "Oil, Gas, Coal and Other Minerals," sponsored by the Rocky Mountain Mineral Law Foundation.
39. J. Pearson, "Organizational Response to Occupational Injury and Disease: The Case of the Uranium Industry," in *Social Force* (Vol. 57, no. 1, September 1978) pp. 23–41; *Navajo Times* (August 31, 1978; September 7, 1978).
40. During the renegotiation of the El Paso coal lease, the Navajo nation's lack of information and expertise were obvious. The Navajo representatives settled for a royalty of eight percent, whereas the federal government was requiring 12½ percent on public lands. The agreement had to be subsequently revised at the insistence of the secretary of interior. Utah International will also increase its royalties to the 12½ percent level, probably. Such increase merely matches return earned on public land and does not capture resource rents which are in the 40–70 percent range.
41. United Nations Economic and Social Council, *Transnational Corporations in World Development: A Re-Examination* (New York: United Nations Publications, 1978).
42. *Navajo Times* (June 13, 1978).
43. The sulfur penalty fee would be set at the level of $.15 per emission pound on all emissions over one million pounds for the first year and then would increase $.15 annually until it reached $.75 per pound.
44. *Navajo Times* (March 27, 1978) p. 10.
45. In *Oliphant v. Suquamish*, the Supreme Court denied Indian governments' power to try and punish a non-Indian who committed a crime and was arrested on the reservation. This "inherent limitation" is a new creation of the Court and greatly impairs the operations of Indian governments. The Court's position says indian sovereignty is restricted to self-government, applicable to Indians only, not to non-Indians living on the reservation.
46. See Ernst and Ernst, *Planning Manual For Energy Resource Development on Indian Lands* (Washington, D.C., March 1978) p. 43. Prepared for the United States Department of Energy. Two structures are explained: proportionate shares of capital contributed by each partner and equity payment out of income. No mention is made of the ordinary practice in joint venture, for the resource itself to provide the owner's investment.
47. The type of agreement, that is, concession, joint venture, service contract is not the most crucial factor in obtaining increased revenues and control. More important are the specific terms in each agreement and the ability of the host country to monitor and enforce these terms.
48. Bureau of Indian Affairs, *Forestry Report* (Washington, D.C.: United States Government Printing Office, 1974).
49. Aberle (1969) p. 253.
50. Reno (1978) Chapter 7. See also: Lawrence Mosher, "NAPI's Problems Blamed on Mismanagement" *Navajo Times* (January 18, 1979) pp. C-2–4. Reprinted from *National Journal*.
51. Reno (1978) Chapter 7.
52. *Navajo Times* (August 24, 1978) pp. 1–2.
53. Sorkin (1971) pp. 80–81.
54. *Ibid.*, p. 8.
55. R. Trajtenberg, "Transnational Enterprise and the Cheap Labor Force in Less Developed Countries," Working Paper (Geneva: International Labor Office, December, 1976).
56. Martin Wistisen, et. al., *A Study to Identify Potentially Feasible Small Businesses for the Navajo Nation: Phase I, An Evaluation of Income and Expenditure Patterns.* (Provo, Utah: Center of Business Economic Research Survey, Research Center, Brigham Young University, 1976) Vol. II, p. 108.
57. Office of Economic Development Programs, Navajo Nation (1977) p. 17.
58. Elliot (1975) p. 172.
59. Robbins (1978) p. 10.

60. *Navajo Times* (June 8, 1978) p. 21.
61. *Ibid.*, (September 21, 1978) p. A-16.
62. *Ibid.*, (October 19, 1978) p. A-2.
63. *Ibid.*, (Quote from Tom Brose, Director, NLRB.)
64. *Statistical Abstracts* (1977) p. 773.

8

TRIBAL ENTERPRISES: WILL THEY SURVIVE?

Al Henderson

Developing countries the world over face similar problems in their quest for self-sufficiency. Each country is besieged by development problems requiring major decisions to utilize its human and natural resources. Many suffer a need to create job opportunities for their huge reserve of labor. All suffer from relinquishing their primary resource to be exported to meet world demand. They suffer from inflation, lack of adequate technology transfer, lack of plans to replace depleting resources, and a lack of management and technical personnel capable of understanding the full implication of their development policies. In many ways these problems are the subject of much concern to the Navajo people. How well these problems will be articulated, understood and acted upon is the subject of this paper.

A central point in developing this conceptual discussion arises out of the Navajo government's mandate to develop the private sector within the Navajo nation. In his inaugural address beginning his third term of office, Chairman of the Navajo government, Peter MacDonald said:

> We must move immediately to designate six locations as economic growth centers, magnets to draw the dollars that now drain off the reservation. We shall plan and build in those areas, shopping centers, recreation complexes, social service centers, health care centers and modern homes.[1]

The Chairman's concern and implications are clear. The Navajo government will promote full scale development of the private sector by improving business opportunities for the Navajo businessman as well as the Navajo worker. In short, the Navajo government will initiate a plan of action to permit Navajos to invest in their future.

This paper will explore those areas of immediate concern in developing an adequate economic base in the private sector. The focus of this discussion will revolve around the Navajo government enterprises since the unemployment dilemma was thought to be solved through creation of Navajo government enterprises.

THE ENTERPRISE

The Navajo Council is vested with authority to create enterprise for purposes of making profit and for the benefit of the Navajo people. The business and affairs of the enterprise are conducted by the Board of Directors whose appointment must have the concurrence of the Council. The Council has full authority to question and make final decisions on its structure, management, and operations. In fact, the enterprise is a collectively owned business firm established and operated by the Navajo government. Unlike a typical American business firm, the enterprise is characterized by collective ownership and such ownership cannot be capitalized.[2]

The initial working capital for an enterprise is provided by the Navajo government out of its General Fund.[3] In theory, the enterprise should operate as a profit-maximizing firm, its capital addition and expansion to be financed through its retained earnings.

What has been the performance of existing Navajo government enterprise? What type of benefits or return on investment have accrued to the Navajo people as a result of their existence? Why has only one Navajo government enterprise been successful and others continue to fail? What are the characteristics of this successful enterprise? Should the Navajo government continue to endorse development of collective enterprises? How can the Navajo government determine when to invest in enterprises? And under what conditions can they expand? These are some of the questions being raised by Navajo economic planners.

At best estimate, the Navajo government has some $50 million invested in its enterprises. These are investment monies which are derived from resource exploitation. A few years ago, many of these enterprises were threatened with bankruptcy. Those enterprises which survived are earning marginal profits.

Unlike other Navajo enterprises, the lone success story rests with the Navajo Forest Products Industries. For more than twenty years the NFPI has operated and managed effectively the Navajo forest and its products. Its expansion has grown from harvesting and logging to lumbering, to particle-board products and now to furniture products.

The enterprises contained in Table 1 provide employment to only 3 percent of the employed Navajo labor force. Five out of twelve operate at a loss.

TABLE 1

Navajo Government Enterprises
January, 1979

	Employment		*Current Profit/Loss*
Enterprise	*Navajo*	*non-Navajo*	*Status*
Navajo Tribal Utility Authority	289	17	Profit
Navajo Housing and Development Enterprise	5	1	Loss
Greater United Navajo Development Enterprise	0	0	Loss
Navajo Engineering & Construction Authority	288	12	Profit
Navajo Arts and Crafts	7	1	Loss
Navajo Forest Products Industries	624	24	Profit
Navajo Aviation Authority	2	3	Loss
Navajo Agricultural Products Industry	123	8	Loss
Navajo Businesses Authority*			
Navajo Times	16	5	Profit
Navajo Optics	24	2	Profit
Navajo Wool Program	10	0	Profit
Navajo Tribal Warehouse	21	0	Profit
TOTAL	1409	73	

Source: Division of Economic Development, The Navajo Tribe, January 1979.
*Proposed

Impeding the growth of many of these enterprises is access to capital. Professor Michael G. Ellis contends:

> The discussion of the evaluation of collectively owned Navajo tribal enterprises centers mainly on the topic of property rights. Private property rights or the rights to own, use, and dispose of property as the right of the individual are taken for granted under American capitalism. For the Navajo, however, several different forms of property rights arrangements have been tried over the past century.[4]

In fact, individual property rights, by law, do not exist for transacting a purchase or sale of Navajo lands. Instead, Navajos are granted use-rights. In the absence of noncapitalizable property rights, the Navajo government must handle its need to accumulate capital in different ways than the American economic system. For many enterprises, if not all, extensive borrowing from foreign lending institutions has permitted their continued survival. In many cases, outstanding debts incurred by enterprises have been absorbed by the Navajo government.

Another problem is the general lack of understanding of and ability to interpret national economic indicators. All businesses are subject to inflation, rising interest rates, and fluctuations in demand. Those businesses not capable of adjusting their business operation according to changing economic environment have suffered heavy losses. This is an acute problem with businesses operating within the Navajo nation. An examination of the relationship between financial institutions and the Navajo government is one of dependency. Major entrepreneurial activities are having to rely extensively on borrowing from external financial sources, many of which are located in the Southwest. The Navajo government's need for finance capital is discussed in its Annual Economic Report:

> The degree of Navajo economic self-sufficiency is very low. There is a continual reliance upon outside funding sources to support the level of employment on the Navajo Nation. There is a high proportion of employment which is not directly productive reflected in the present structure of employment. This high proportion is composed of employment in education, health, and government. Inversely, a low proportion is accounted for in productive activities such as agriculture, manufacturing and retail trade. An incompatible level of local employment is generated out of the income brought into the Navajo Nation. The border towns, where there is a better delivery of goods and services, absorb a majority of incomes earned on the reservation.
>
> A major cause of the underdeveloped Navajo economy is the lack of physical capital. An increase of financial resources for investment in building up physical capital is needed.[5]

The stark reality is that in the absence of any financial intermediacy supporting Navajo entrepreneurial activities, the Navajo government will remain dependent upon external finance capital for economic development projects.

THE DILEMMA

Navajo government officials know that wealth is flowing off the reservation. The unyielding circumstance under which this occurs reflects the Navajo government's push to create employment for some 30 percent of its nation's unemployed. Pressed by the need to create more jobs, the government sought to cash in on the high demand for their energy resources. Reliable estimates have quantified Navajo energy resources at 100 million barrels of crude oil, 80 million pounds of uranium ore, and 4 billion tons of coal. Nearly all these holdings are leased out to corporations for exploration or mining.

Consequently, the Navajo nation has become primarily an energy-based economy, exporting all its nonrenewable resources. The problem associated with this mineral development "strategy" is that it neglects to replace depleted mineral assets with reproducible capital assets (i.e., productive enterprises). Undoubtedly, the Navajo government must reevaluate its investment strategy. However, little is understood about the current investment strategy. Economic planners cannot be expected to perform miracles without adequate knowledge of how and why Navajo revenues are being invested in the money market.

The process of investment is not a simple undertaking because it involves saving part of current income and risking those savings in some productive venture. Experience has shown that there is a reluctance on the part of the Navajo government to invest in long-term ventures. The Navajo government must avoid risk and must have funds available to provide immediate tangible services to the Navajo people. In the end, mineral resource revenue has been consumed in the provision of nonproductive services. Allocation and distribution of Navajo monies in this manner has been the practice for more than fifty years.

Economic projections indicate that the supply for Navajo energy resources will peak around the year 2025. With its rapidly dwindling reserves of oil and gas, uranium and coal, the Navajo nation must initiate plans to replace its depleting resources. Preparations must be made for the transfer of a skilled labor force in the mining and construction industries into other industries, farming being the most likely. Plans must be made so that job security is maximized for those to be affected by job loss and for a new generation of Navajo workers.

FINANCE CAPITAL: A FUTURE CONCERN

Within the Navajo nation establishing and maintaining economic stability requires planning with consciousness, awareness and a keen sense of the fact that minerals once mined will be lost forever. However the solution is formulated, it must address and answer the manner in which those workers laid off as a result of exhaustion of mineral resources will transfer their skills to some other productive activity. Transfer of technology must also be considered.

The thinking within the Navajo economic planning and development department is to encourage the Navajo government to create its own development bank. A bank could serve as a designer and financier of Navajo development programs. Theoretically, a development bank is designed to supply one or more of the essential ingredients of successful investment. If designed adequately, it can meet the need for large outlays by mobilizing savings and by transferring them from those who save to those who are prepared to invest. A Navajo development bank could become the main instrument and institution through which the Navajo government could stimulate the creation and growth of commercial, industrial, agricultural industries, and to mobilize external and domestic capital and to have the capability of financing government enterprises. A review of some of the current plans to meet capital requirements is in order.

A mechanism to secure capital could be an effective tax program. A tax credit could be given to energy corporations which invest in other economic sectors of the Navajo nation. This would reduce their tax liability. Two important problems accompany this suggestion. First, for most extractive industries, diversification may be quite costly. It may be more economical to pay the tax and let the Navajo government be responsible for developing its mineral replacement industries. Secondly, a proposed tax program is now under litigation and the possibility for such a tax incentive arrangement may still be far in the future, or not even possible under United States law.

Another avenue has recently appeared. A reputable insurance company announced that it was in the market "for opportunity to invest large amounts of capital in development."[6] The announcement came at a meeting of the 25-member Council of Energy Resources Tribes (CERT). This proposal runs in the same vein of thought which would permit the Navajo government to become indebted to external financial markets. Unfortunately, this offer may become more attractive in view of the fiscal crisis currently suffered by the Navajo government in pursuing its development program. Conceivably, the Navajo government could find this offer most favorable for the short run.

Another alternative is to study recent developments in setting up rural development finance institutions utilizing federal funds. Under the Community Service Act of 1974, Title VII, Congress mandated a provision for financing economic development in poor communities. It did this by appropriating $46.5 million to the National Rural Development and Finance Corporation (NRDFC).

In forming the American Indian Development Corporation (AIDC) in August, 1978, the founders sought to utilize NRDFC to address particular financing of economic development needs of Indian communities. To accomplish this goal, AIDC plans to establish the American Indian Development Finance Institution (AIDFI) which will operate, in effect, as a development bank. Because AIDFI is still in the process of being established, its contribution to effective solutions to some of the economic ills of Indian nations is still to be determined for several years to come.

SELF-DETERMINATION

The above examination complements some of the findings of the American Indian Policy Review Commission. In its final report the commission stated:

> Capital can be generated from three sources: internally from tribal sources or externally from traditional capital markets or from specially created sources such as a developmental bank for American Indians.[7]

Being the largest Indian nation, with potential for recapturing a sizable amount of the value of their energy resources, the Navajo nation should begin to give some thought to establishing a financial intermediary. The suggested approach depends on how sincere the Navajo government is in its pursuit of renegotiation of mineral leases and the goal of self-sufficiency.

Unless the Navajo nation regains its control over its natural resources and begins to develop them internally, economic self-sufficiency will continue to be illusive. Successful development requires long-term economic development.

8. NOTES

1. Peter MacDonald, *Inaugural Address* (Window Rock, Navajo Nation, January 1979).
2. See: Michael G. Ellis, "Property Rights and Indian Tribal Enterprises: The Navajo Case," in *Arizona Business* (April 1978).
3. Sources of funds for the General Fund derives from royalties received on minerals extracted from leased Navajo lands.
4. Ellis, p. 15.
5. Navajo Nation, *Overall Economic Development Program, 1978* (Window Rock, Navajo Nation: Division of Economic Development, 1978).
6. "Insurance Company Offers 25 Tribes Funds for Developing Energy Sources," in *The Arizona Republic* (November 19, 1978) p. A-5. The firm is Equitable Assurance Society.
7. American Indian Policy Review Commission, *Final Report* (Washington, D.C.: United States Government Printing Office, 1977) Vol. I, p. 359.

9

TAX ALTERNATIVES

Gerald J. Boyle

I. INTRODUCTION

Without the power to tax, the Navajo government will never make significant progress toward self-determination. If "the power to tax is the power to destroy," then a lack of such power can do nothing but assure a continuing state of dependence. While such a principle is almost self-evident, going beyond the mere statement calls for analysis of the taxing potential of the Navajo government.

The Navajo people have made substantial progress during the past decade. While there are many indicators to support this statement, increases in income and school enrollments offer adequate measure of progress. From 1960 to 1970, average family income in the United States rose by 74 percent. During the same period, average family income of Navajos rose by 128 percent—a *rate* of increase close to double that of the United States. School enrollments, which were very low 10 to 15 years ago, have risen to a level where over 96 percent of Navajo children ages 6 to 17 were enrolled during 1970—making Navajo enrollments comparable to those of any state.

While progress has been made in such areas as incomes and school enrollments, much remains to be done. Despite the relatively rapid increase from 1960 to 1970, average Navajo family income was only 38 percent of average U.S. family income in 1970. It is true that school enrollments have improved remarkably for the age group 6 to 17: however, fewer than 4 percent of Navajos age 18 to 34 were enrolled in college during 1970 compared to 15 percent in surrounding states.

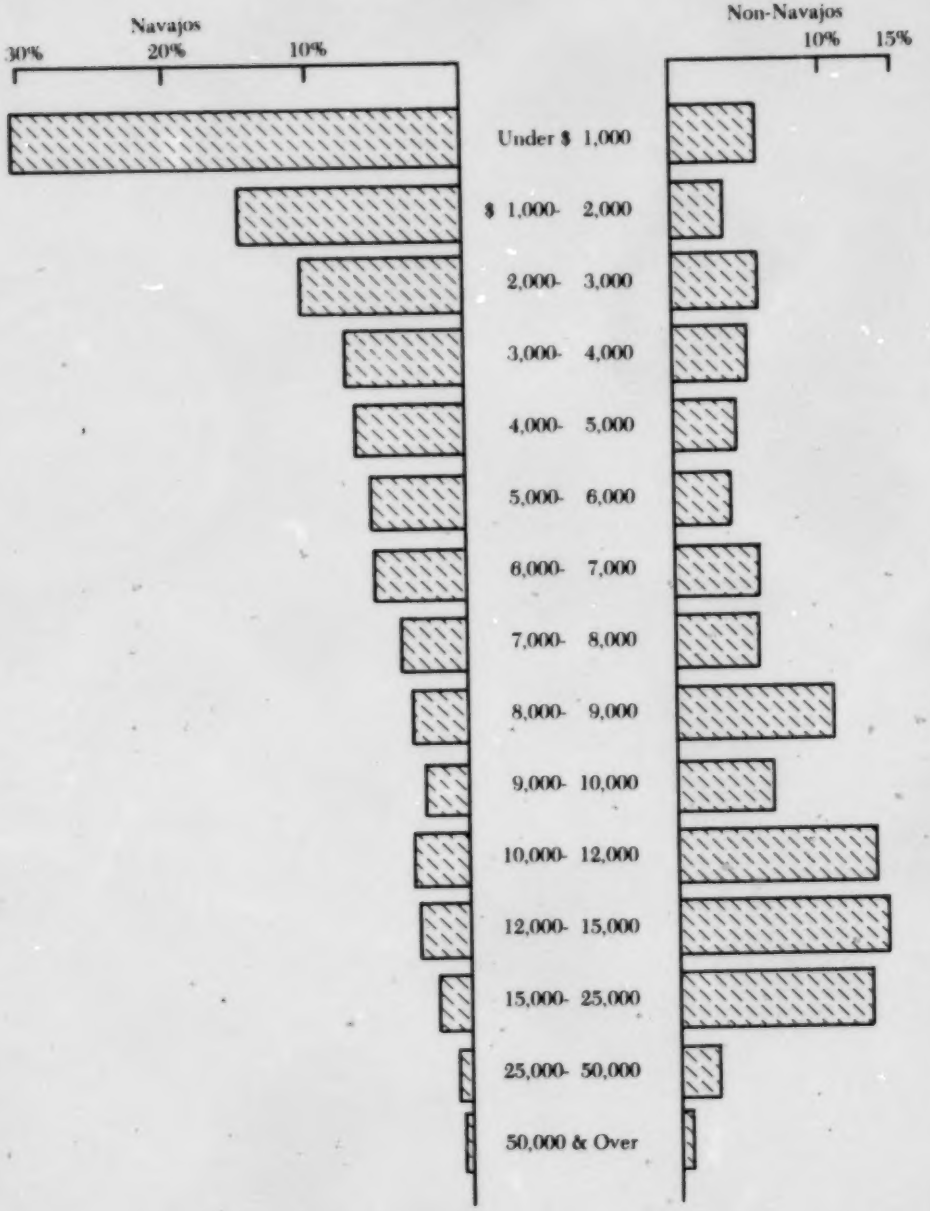
The Navajo Ten Year Plan points the way for these future efforts, identifying the deficits which exist and laying out programs for closing these deficits. However, if the Navajo nation is going to meet its obligations as a government, independent sources of revenue must be found to support those public services which are the responsibility of every government—particularly the development of the human resources of the Navajos.

Taxation by the Navajos can be divided into two general categories: *internal* which is borne by the Navajos themselves; and *external* which can be defined as taxation borne by non-Navajos. There are non-Navajo business activities on the reservation currently being taxed by those state and local governments in which the reservation is located—at least a share of the "external" revenues should be available to the Navajos. On the other hand the Navajo nation, just as any other political jurisdiction, should begin developing a system of internal taxation to support those governmental functions which benefit its people.

Note: Since more current information is not available, the data used in this paper are derived from the *Census of Population, 1970*. Estimates for the reservation include the group of Census County Districts which are coterminous with the reservation. See G. J. Boyle, "Economic Status of the Navajo on the Reservation, 1969," 39 pages.

DIAGRAM 1

COMPARATIVE DISTRIBUTION OF INCOME FOR NAVAJOS AND NON-NAVAJOS ON THE RESERVATION, 1969



II. MAJOR INTERNAL TAX SOURCES

Internal taxation to yield any substantial amount of revenue must be a general tax levied on property, income or sales. There are other forms of taxation, such as selective excises (cigarettes and gasoline) and death and gift taxes but the yield from such tax is low and they are generally used to supplement the major sources. Since there is little if any private property on the reservation, the general property tax is not a suitable source of revenue.

The following summary of alternatives emphasizes those tax sources which yield substantial amounts of revenue. Each alternative is briefly discussed with respect to equity, yield, responsiveness and administration.

GROSS RECEIPTS TAX

The gross receipts tax is a source currently utilized by 45 of the 50 states—mainly because it yields large revenues at low rates. One drawback to this tax is its regressivity—the rate declines as income increases. The tax is levied at a flat rate on final sales to consumers: consumption as a percent of income declines as income increases; therefore, any tax levied on consumption will decline with respect to income as income increases. The following table illustrates this relationship:

Annual Income	*Consumption*	*Gross Receipts Tax at 4%*	*Tax as % of Income*
$ 2,000	$ 3,000	$120	6.0%
6,000	6,000	240	4.0
15,000	10,000	400	2.7

A family with only $2,000 of income, by borrowing and the use of savings, spends $3,000 per year and pays tax equal to 6 percent of income. Another family, with income of $15,000, spends $10,000 and pays tax equal to only 2.7 percent of income. One desirable characteristic of such a tax is that the yield grows as economic activity (or income) increases. This relationship for a gross receipts tax indicates that when income increases by 10 percent, tax revenues also increase by 10 percent. The administration of such a tax is relatively simple if the base is comprehensive. If certain forms of consumption such as newspapers, rent or gasoline are exempted, then the administration is more difficult. However, since there are only about 250 firms on the reservation, the administration of the tax would be relatively simple.

While the gross receipts tax has good and bad features, it is widely used if for no other reason than because a low rate results in relatively large revenues. However, such a tax is not suitable for use on the Navajo Reservation because of the very substantial consumption leakage that occurs. As indicated in Table 1, estimated retail sales on the reservation were only $19.6 million in 1967 while total money income in 1969 was $77.2 million. Therefore, only about 25 percent of money income generated results in retail sales on the reservation, the remainder being made mostly in the border towns. Based on these estimates, a gross receipts tax would yield only $200,000 for each 1 percent and would also place a disproportionate tax burden on low-income Navajo people.

TABLE 1

Estimated Retail Sales on the Reservation, 1967
(dollars in thousands)

Type of Firm	Six County Area		Reservation	
	No. of Firms	Retail Sales	No. of Firms	Estimated Retail Sales
General Merchandise	136	$16,695	100	$12,460
Food	89	20,389	2	458
Automotive	24	15,397	4	642
Gasoline Service	164	14,687	42	3,761
Apparel and Accessory	11	1,038	1	94
Furniture, Home Furnishings	11	836	2	152
Eating and Drinking	138	7,054	16	818
Miscellaneous	130	8,899	4	274
Service Establishments	368	13,837	24	903
TOTAL	1,071	$98,832	195	$19,562

INCOME TAX

The income tax, such as that currently in use in 40 states, is generally taken to be the most equitable tax. This is so because the rate structure is progressive—the rate increases as income increases. For instance, the New Mexico tax rates rise from 1 percent on the first $1,000 of taxable income to 9 percent on taxable income of $200,000.

If such a tax was levied on the Navajo it would yield little revenue even with relatively high rates. This is true because the distribution of income for the Navajo is concentrated at the low end of the distribution (see Table 2 and Diagram 1). If non-Navajos were also subject to the tax, the yield would increase substantially. While there are relatively few non-Navajos on the reservation, their distribution of income is concentrated at the upper end of the distribution (see Table 2). However, since non-Navajos are already subject to the income tax of New Mexico and Arizona, it would be a difficult tax to justify.

The administration of a progressive income tax is relatively complex. Unlike the gross receipts tax which is levied on business firms, the income tax is levied on individuals. There are about 5,000 Navajo families and about 2,000 non-Navajo families who would have high enough incomes to file returns. This would require a relatively large administrative staff with a substantial auditing function.

PAYROLL TAX

The payroll tax is widely used by large cities in the U.S. It is usually levied at a low rate of 1 percent, payable on all wages and salaries. The tax is generally taken to be neutral with respect to equity. The tax rate is 1 percent at all levels of wages and salaries. However, since high income families tend to have income other than earnings, such as dividends and interest, there is some regressivity at the upper end of the income distribution.

The yield of such a tax is relatively high. As mentioned above, consumption expenditures on the reservation amount to only about $20 million. However, total income on the reservation amounts to $50 million for Navajos and $27 for non-Navajos, with about 85 percent of this from wages and salaries (see Table 3). Therefore, a 1 percent payroll tax levied on wages and salaries would yield $660,000—about three times greater than the yield of a gross receipts tax at the same rate. Some of the largest cities using the payroll

tax also levy against unincorporated business as well as corporations. One final point, a payroll tax would also tap everyone who works on the reservation but is not a resident. At present levels of income, the total yield of a comprehensive payroll tax on the reservation would probably approach $1 million for each 1 percent levy.

It is possible to improve the equity of a payroll tax by exempting some minimum level of income from the levy. However, this can only be done at the expense of a substantial revenue loss. For instance, if the first $3,000 of income was exempted the yield of a 1 percent tax would fall by almost one-half to about $350,000. This would result in exempting about one-half of total Navajo income and about one-fourth of non-Navajo income on the reservation. This differing impact is due to great difference in the distribution of income between Navajos and non-Navajos as illustrated in Diagram 1.

While the payroll tax has many advantages, it also has several drawbacks. Federal and state governments are exempt from withholding such taxes although they have complied on a voluntary basis in cities utilizing the tax. The payroll tax has a responsiveness of unity—in other words, when economic activity increases by 10 percent, the yield of a payroll tax also increased by 10 percent. Since the base of the tax is very broad, its yield tends to move in step with changes in the economy. The payroll tax, if restricted to wages and salaries, is relatively easy to administer. However, if exemptions and deductions are allowed administration becomes more difficult. The addition of income of unincorporated businesses and corporate profits is another complicating factor. However, this is minimized when definitions of income and profits are made comparable to those of the Federal income tax laws.

TABLE 2

Money Income Distribution for Navajos and Non-Navajos
On the Reservation, 1969
(dollars in thousands)

	Navajos		*Non-Navajos (excluding Hopis)*	
Income Class	*Number of Families*	*Money Income*	*Number of Families*	*Money Income*
Under $ 1,000	3,927	$ 1,946	161	$ 81
$ 1,000- 2,000	1,796	2,679	91	137
2,000- 3,000	1,416	3,523	168	415
3,000- 4,000	1,011	3,518	139	487
4,000- 5,000	961	4,293	113	509
5,000- 6,000	779	4,284	105	578
6,000- 7,000	789	5,096	160	1,040
7,000- 8,000	549	4,102	152	1,140
8,000- 9,000	387	3,255	297	2,525
9,000- 10,000	351	3,318	178	1,691
10,000- 12,000	437	4,678	382	4,202
12,000- 15,000	399	5,207	391	5,279
15,000- 25,000	188	3,244	382	6,516
25,000- 50,000	26	688	61	2,098
50,000 & Over	6	341	7	350
TOTAL	13,022	$50,154	2,765	$27,052
Total Population	66,617		8,127	
Per Capita Income	$753		$3,328	

Finally, the payroll tax does fit the Navajo government's unique position to some extent. The Navajo Tribe, composed of perhaps 150,000 people living on 25,000 square miles of territory, is a small governmental unit. While the tribe must be capable of dealing with outside organizations, and therefore must perform many functions of a state and nation, the services it provides to its people are local government in character. The Navajos receive all the services provided by the federal government as well as those provided by the state governments of New Mexico, Arizona and Utah. What is missing are those services provided at the local level such as police, fire and recreation. Therefore, in an integrated system of government taxes and services, the Navajo people receive federal and state services just as any other citizen, and would provide local government services through local taxes. The payroll tax is used exclusively by local governments in the U.S. and would, as mentioned above, fit the position of the Navajo Tribe in our multi-level system of government.

TABLE 3

Money Income by Source for Navajos and Non-Navajos
On the Reservation, 1969
(dollars in thousands)

Source of Income	*Navajo*	*Non-Navajo*	*Total*
Wage and Salary	$41,677	$24,347	$66,024
Non-Farm; Self-Employment	267	1,105	1,372
Farm, Self-Employment	309	305	614
Social Security or Railroad Retirement	2,258	268	2,526
Public Assistance or Welfare Payment	3,731	46	3,777
All Other Income	1,777	963	2,740
TOTAL	$50,019	$27,034	$77,053

III. EXTERNAL TAX SOURCES

The two major resources of the tribe currently utilized by non-Navajos are the land and the natural wealth (oil, gas, coal and uranium) contained in the land. Both of these forms of resources offer good bases for taxation. One great advantage of such taxation is that the burden is exported and borne by the final consumers who reside off the reservation—analogous to the state of Michigan taxing automobiles produced in Michigan but consumed in different states. The discussion which follows is in two sections:

—tax on land
—feasibility of taxing energy resources

TAX ON LAND

The land of the Tribe is not being taxed either directly or indirectly by the state and local governments in which the reservation is located. However, the value of equipment, buildings and inventories is being taxed. In New Mexico, for instance, in 1972 the state and its local governments assessed and taxed the Four Corners power complex as follows:

Firm	*Amount ($ thousands)* *Assessment*	*Tax*
Arizona Public Service	$33,255	$ 669
Southern California	22,829	459
Salt River	5,018	101
Tucson Gas	5,767	116
Utah C and M	11,015	222
TOTAL	$77,884	$1,567

In total, the complex is assessed at almost $78 million and yields revenues of more than $1¼ million per year.

At the present time neither the value of the land nor the value of the leasehold is being taxed. If the value of the land was one-fifth the total value of the complex, then the land would be worth about $19.5 million and taxed at the going rate would yield almost $400,000 per year.

This approach would avoid the businessman's complaint of "double taxation." The total tax collected by New Mexico and the tribe would be equal to what the tax would be if the complex was located on private property. In addition, this same tax would be applicable to the coal gasification plants to be constructed in the future.

FEASIBILITY OF TAXING ENERGY RESOURCES

The Tribe currently receives rent and royalty from oil and gas produced on tribal lands. The rental is credited against the royalty so for producing wells the tribe's revenue is its royalty, or 16⅔ percent of the value of production, amounting to $5.4 million in 1971.

States also own lands on which oil and gas are produced. New Mexico, for instance, receives bonus, rent and royalty from oil producers who drill and produce on state land. However, the state also levies severance, gross receipts and property tax on oil and gas producers, amounting to about 9 percent of value in 1978. These taxes are also levied on the production occurring on the reservation, including royalties to the tribe.

In 1973, the royalty on coal varied from 20¢ to 25¢ per ton, depending on where the coal is used as well as its market price. Once the coal is mined and the royalty paid, the Navajos gain no other revenues. The power plants convert the coal to electricity with no further payment to the tribe. If the coal was located on state land, the company would pay the royalty on the coal but it would also pay the taxes levied on utilities that produce electric power. In 1978, state taxes levied on steam coal mined in New Mexico amounted to about 7 percent of value with another 4 percent if used for the generation of electricity.

A tax on the conversion of coal to some other form of energy can be structured in several ways. A severance tax on the coal itself is the most common form and in addition the conversion to electricity presents a good tax base. Another form is the "energy conversion" tax which levies tax on the BTU content of the resource being converted.

The Navajo Reservation contains substantial reserves of uranium. It has been estimated that these reserves amount to about 80 million pounds U_3O_8 and represent about 10 percent of the reserves in the state of New Mexico. Since the state has about half the U.S. reserves, the Navajos have about 5 percent of U.S. reserves. The state of New Mexico presently levies a series of taxes on uranium which in 1978 amounted to about 6.6 percent of sales price.

Energy resources represent an excellent tax base for the Navajos. Prices of such resources have all had substantial increases since the formation of OPEC in 1973. The world price of crude oil has risen from about $5.00 to $15.00 per barrel; steam coal has increased from about $6.00 to $9.00 per ton; and uranium has skyrocketed from $7.00 to $44.00 per pound

in the current market. Not only have energy resource prices risen far beyond other prices in the past five years but they will continue to do so. Given the relatively tight supply of crude oil, OPEC nations will find it easy to exploit each future difficulty in the form of higher prices. Increases in oil prices will be quickly reflected in the prices of substitutes such as steam coal and uranium.

The general argument that the production of scarce energy resources will in the future result in substantital profits is easily grasped. Not so easy is the extent to which this tax source can be tapped. However, it should be possible to measure, at least roughly, the economic rent of producers of Navajo resources. In the case of steam coal for instance, data are available to calculate the cost of coal and electricity from Navajo competitors, such as Wyoming and Montana, for delivery to Navajo customers. Some inkling of the magnitude here can be gained from the fact that Montana levies a 30 percent severance tax on steam coal. Taxes on uranium are subject to the same type of analysis. Information is available on the extent, grade and forward cost of Navajo uranium reserves. These can be analyzed to determine, at least roughly, the cost of production per pound. Such estimates, when matched up with current prices would provide a good beginning for the negotiation of tax levies.

IV. LEASE RESTRICTIONS ON THE TRIBE'S POWER TO TAX

There are possibilities for deriving substantial revenues from external taxation. However, in every case there are restrictions which will be difficult to overcome. The Navajo Tribe is comprehensively prohibited from levying any form of tax on any aspect of the generation of power at either the Four Corners or the Page plants for a period of approximately 45 years from the signing of the contract—or, at some date well beyond the year 2000.

The lease for the Four Corners plant, signed December 1, 1960, with the Arizona Public Service Company, specifies that "The aforesaid lease rentals are to be in lieu of all taxes, assessments, levies, exactions or charges of any kind made or imposed by the Tribe . . ." The paragraph continues, tightening the restriction as with a well-pulled knot: the tribe will not tax or assess in any manner whatever, directly or indirectly, the following with respect to the company:

- property located on leased lands
- rights granted in the lease
- ownership, construction and operation of plant and related facilities
- generation of power or its transmission
- sale or disposal of power
- company income
- sale or delivery of fuel to the company

Following this recital of restrictions, the paragraph does concede that the tribe may levy taxes after 35 years from the commencement of commercial operation of the last unit of generating capacity installed during the first ten years of the lease—giving the company tax-free operation for as long as 45 years. When this date passes, about the year 2005, the Tribe may then levy a property tax but at a rate only one-half that of New Mexico or Arizona.

The lease signed September 29, 1969, with Arizona Public Service for the Page power plant is equally restrictive. As with the Four Corners lease, the Page lease specifies that lease rentals and payments for rights of way are to be in lieu of all taxes, assessments, imposts of any kind, and the Tribe will not tax or assess, directly or indirectly, etc., etc. In addition, the Page lease prohibits not only taxation of the fuel supplier but specifically

excludes the fuel transporter as well. These restrictions appear to be all-embracing and taxation in any form of activities even remotely related to the generation of electric power is impossible.

There are several good arguments to be made in contesting a condition which makes it impossible for the Navajo government to function as a government. It is only recently, stemming from the policy of self-determination, that the Navajo government has begun to function as a government. It is clear that the Navajo government must accept the responsibility for Navajo general welfare if the goal of self-determination is to have meaning. In order to meet this responsibility the Navajo government must have the power to tax and it must be able to tax its natural resource wealth because this is the only substantial tax base on the reservation.

If the Navajo government is to carry out its governmental responsibilities, and actively seek to improve the general welfare of the people, it must have tax revenues. At the present time, taxes on non-Navajo activities on the reservation are levied exclusively by the states and their local governments. For instance, the state of New Mexico levies all its taxes on the Four Corners power complex. The state also levies a complete range of taxes on oil and gas production occurring on the reservation. Severance, gross receipts and property taxes are levied on value of production. The Navajos should share in these taxes since the Navajo government has governmental responsibilities and provides public services to its citizens just as do the states and their local governments.

V. TAX ACTIONS BY THE TRIBAL COUNCIL

To further the taxation of economic activity on the reservation, the Tribal Council created a Tax Commission in 1974. The commission passed two taxes by 1978 as follows:

> A *leasehold interest tax* would provide a means for capturing the surplus value inherent in those leases that have very low rent and royalty rates. Leases for which the existing rents and royalties reflect fair market returns would not have any surplus value which could be taxed. But those leases from which the Navajo Nation is not receiving a fair market return would be subject to appropriately compensating taxes.
>
> A second type of tax would be on the value of production of the larger enterprises operating on the reservation. A *value-added tax*, based on the differences between a firm's gross sales and its purchases from other firms (but also allowing for the deduction of depreciation and wage payments to Navajos) would be an effective means of permitting the Navajo Nation to share in the growth of output and income, while avoiding any disincentives to investment or the employment of Navajo workers.*

These taxes, while not implemented as of early 1979, are expected to yield substantial revenues. According to the Commission *Report* the leasehold interest tax was expected to generate $26 million in 1977 while the business activities, or value added tax would yield $10 million.

Recent discussions with an official of the Tax Commission indicate that the business activities tax is moving forward with first payments expected in the summer of 1979. It is estimated that there will be about 400 taxpayers and that the revenues will be substantially in excess of the original estimates made by the Tax Commission.

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*Navajo Tax Commission, *Report* to the Advisory Committee, Navajo Tribal Council (November 1976) pp. 3–4.

CONCLUDING REMARKS

The Navajos have moved ahead slowly but surely with their tax program. If 1979 does see the collection of tax revenues it will mark an important milestone in the move of the Navajo Tribe toward self-determination. While previous leases have prohibited taxation, this provision should be refused by the Navajos at all costs. It would be unthinkable for a sovereign government, such as one of the fifty states, to commit itself to a provision of no taxation when putting its natural wealth under lease. As economic conditions change and the responsibilities of the Navajo Government grow in the future, the Navajos must be free to adjust tax rates and bases as is true for any other sovereign government.

10

STRUCTURAL CHANGES IN NAVAJO GOVERNMENT RELATED TO DEVELOPMENT

Lynn A. Robbins

This paper records some of the structural changes in the Navajo government that are the direct or partial result of energy and other mineral developments on and near the Navajo reservation. Reservation residents, as the preceding articles have described, are in an exceedingly vulnerable position in the United States class structure. They are essentially under the control of the United States Department of the Interior and the United States Congress and have had a long history of powerlessness and exploitation in the United States and world capitalist economy.

The structure, function and units of Indian governments established by the United States government were patterned after the United States federal model and were seen by federal officials as a means of hastening Indian assimilation and self-government within the United States society at large, and in creating and maintaining democratic principles which were regarded with such pride and self-esteem by national leaders.[1]

Indian governments with constitutions, codes or charters, often have, on paper, considerable powers to manage their own affairs, and some have exercised their limited sovereignty with dispatch and effectiveness. The Navajos are no exception to this.

However, there are serious problems associated with both the structure and responsiveness of Indian governments. Some weaknesses and strengths in Indian governments rapidly surfaced in the decade of the 1970's when Indian resources were suddenly in great demand for national energy development. Energy companies moved quickly to purchase lands that bore immense quantities of fossil fuels. The Navajos were among the most publicized of Native Americans involved in these corporate activities. They were forced to respond immediately to the challenge of resource sales and management, environmental protection, research programs, labor negotiations, community planning, development programs, legal questions of taxation, plant siting and countless other needs related to the extraction of resources. These demands have forced Indian institutional adaptations to the industrialization of the Mountain West and the Southwest.

In focusing on some of the ways the Navajo political organization has changed and how the changes are related to energy development in the past ten years, a direct cause and effect relationship between accelerated industrialization and the establishment of new offices is not assumed. Some structural changes would doubtless have occurred without hastened claims on Navajo resources and manpower and others would likely have never come into existence without new power developments. This analysis and description are general and do not use specific statistical models that attempt contingent relationships.

The major projects which have had a powerful effect on Navajo development are in the Four Corners and Black Mesa areas of the Navajo reservation and include two coal-burning steam-powered electric generating plants; three coal strip-mines; a 75-mile automated, electric-driven railroad; a 276-mile coal slurry line, and numerous other related facilities.[2]

These massive projects were proposed to and approved by the Navajo Tribal Council with only a few serious questions from Navajo leaders, and while these questions were of central importance, most of the problems associated with energy developments did not arise until after the projects were underway.[3] At that point, the Navajo government responded by establishing new offices to address new and difficult questions.

The Navajos have made some abrupt changes in their labor policies, for instance, as a result of the labor disputes that occurred at the Navajo Generating Station near Page, Arizona in 1971.[4] However, the Navajo nation had been the passive agent of energy developments on its land. That is, there were no instances of the Navajo government initiating development. Because the Navajo leadership felt a sense of persistent powerlessness, the Chairman and his advisers decided to take some immediate actions. By 1970, it was recognized that the Navajo government and the federal agencies that served it, placed too much emphasis on social welfare programs and education rather than development of the Navajo economic base.

In view of the adverse effects of the Four Corners power plant, the Utah International mine, and the Page-Black Mesa projects, the Navajo government realized that many problems needed redressing. These problems include: royalty payments; acquisition of rights-of-way for rail lines, roads, electric transmission lines; labor negotiations—levels of employment, on-the-job training, management training, promotions, discrimination on the job, wage scales, absenteeism; coordinated economic development; criminal justice; community planning; coordinated federal, state and tribal budget accounting and planning; and the development of small businesses. These essential problems, all of which require sound management and control of industries, were firmly in the mind of the Chairman of the Navajo Tribal Council when in 1970, he called for the development of the Ten Year Plan which was designed to identify what would be needed to bring the Navajo standard of living up to the United States average by 1982. The plan was the first of its kind prepared by an Indian government, and is bold in its approach. The Plan urged massive investment of $380 million each year for a period of ten years, nearly all to be used to develop the internal economy of the Navajo nation.[5]

Using the Ten Year Plan as a guide, the Chairman and the Navajo Tribal Council established the Office of Program Development (OPD). This office was the chief agency of the Navajo government for the investigation of ways to achieve economic development in the reservation. In a three-year period (1972–74) OPD planners and economists were instrumental in establishing several offices:[6]

Criminal Justice Planning Commission
Environmental Protection Commission (EPC)
Manpower Administration (now the Office of Labor)
Navajo Small Business Development Corporation
Office of Navajo Labor Relations (ONLR)
Office of Social Services

In 1977 the Navajo Tribal Council established the Office of Finance Policy Analysis (OFPA) which coordinates all budget activities—federal, state, and tribal—the first instance of overall budget control and accounting. This office is particularly crucial in the planning of development since it is able to inform the Navajo Tribal Council, the Chairman, the Navajo government legal counselors, the federal agencies and state offices of the disposition of monies and the financial needs of future programs. OFPA, like most of the new offices, is based on a federal model, in this case the Office of Management and Budget. It should be mentioned that these new offices were added to a rather extensive number of existing Navajo government branches, which have been described by Shepardson.[7]

More than $400 million of federal, tribal, and state funds are used each year on the Navajo reservation for a large number of specific social and economic programs.[8] The Navajo Tax Commission, also recently established and also an institutional product of Navajo involvement with energy projects, serves to study the feasibility of the Navajo government's taxation policies.

These offices, and their parent office (OPD) address an enormous range of specific problems and tasks in connection with development programs. Never has the Navajo government had so many experts to serve it in fulfilling its goals. This was a sudden change for the Navajo people. Before the 1970's the Navajo government relied primarily on the Bureau of Indian Affairs, along with some experts within the Navajo government and special legal counsel, all of whom proved, in retrospect, very disappointing to many Navajo leaders and their constituents.[9]

The new offices strive to inform the Navajo Tribal Council of sources of income, disposition of funds, mineral inventories, tourism, and nearly all other information essential to the management of resources and economic development. At least 22 major reports have been prepared for the Navajo leadership by these offices. The reports are regularly distributed to Navajo Tribal Councilmen and, of course, the offices themselves generally share information.[10] The Office of Program Development and its affiliated offices studies development alternatives and makes preliminary estimates of the impacts of 44 proposed and potential coal-gasification plants, coal and uranium mines, and other projects.[11] These studies are kept up to date as frequently as possible and form the basis upon which the Navajo leaders make some of their major development decisions. There are also important committees in the Navajo Tribal Council, that have been formed, designed specifically to work with the new government offices.

At the time it established the OPD and other innovative offices, the Navajo government was responding, in part, to a growing national awareness of problems associated with economic development. The exploitation of the Third World and certain classes within the developed countries received wide attention, as did the depredation of environments. The national mood was turned toward social change and reform for the protection of the exploited peoples and for the environment. And in further response to these conditions, the Navajo people in the Four Corners area were disgusted with the appalling air pollution and land destruction at the Four Corners power plant and Utah International mine near Fruitland, New Mexico. The federal government addressed the national mood by establishing the National Environmental Policy Act, and the Navajo government soon followed with its series of offices to attempt to come to terms with existing and proposed projects.

The local populations in the Four Corners, in response to a deep sense of alarm and concern, generally supported the establishment of the Shiprock Research Center, which from 1975 to 1977, conducted household surveys, collected socioeconomic data about local Navajos, and served as an information center for local chapters (local government) desiring some assistance with knowledge of existing and proposed energy developments. The Center, entirely foundation funded, and essentially free of ties with federal, state or tribal governments, was chiefly concerned with accurate information, the kind often not available to the general public.[12] A related spin-off of industrial development in the Four Corners was the Coalition of Navajo Liberation, headquartered in Shiprock, and created by local people as a means of registering attitudes toward industries operating or programmed for operation in that region of the reservation. Meanwhile, the Albuquerque branch of the American Indian Movement (AIM) worked in several reservation communities where industries were located to question and oftentimes resist some of the practices of

companies in labor relations, land reclamation, respect for Navajo religious beliefs and other issues.[13]

The Navajo government has responded to increased numbers of industrial projects on a catch-up basis. The contracts and leases entered into in the 1960's were undertaken when Navajos, and most other people in the West, knew little of the value of their resources and the measures they might have taken to protect their property. Energy companies and the federal agencies, one of which is a part owner of the Navajo Generating Station, hastened developments for long-term profits and to sustain energy growth and needs in the major cities of the Southwest. Thus the Navajos were far behind events before they were able to make earnest efforts to protect their workers, communities, lands, energy resources, water and air. They were not alone in the United States in their dilemma. Before most North Americans were finally informed of what was happening to environmental and resource conditions in the middle and late 1960's and early 1970's, much of the damage, abuse, and inequities had long been in existence.

The many new offices established by the Navajo Tribal Council and related research and advocacy groups, such as the Shiprock Research Center, Navajo Liberation Coalition, The Council of Energy Resource Tribes (CERT), and others, were the brainstorm of numerous individuals, particularly planners and economists in the Office of Economic Development who adopted and modified, for the most part, the function, rationale, and structure of existing federal agencies. Some old agencies, such as the National Labor Relations Board were used as models, and some new ones, such as the Environmental Protection Agency were used as a pattern.

The Navajo nation did not initiate energy development, knew little of markets, pricing of resources, the complexities of investments, the nature of mining, capital costs and financing of electrical utilities, options in joint ventures, and any other of the many considerations that could have been provided by the United States government as a trustee of Indian interests. Industries and the United States government approached the Navajos with schemes already planned in detail. The Navajo government was asked only to approve leases and royalties, not to modify or ratify the plans.[14] Only after the projects were well underway did the Navajos act, and when measures were taken to remedy the innumerable inequities, oversights, and abuses of Navajo water rights, environment, labor and resources, much of the damage had been done.

The federal government, trust agent of Native Americans, did not initially assist the Navajos. Rather, it was the Navajos who aided themselves, although they received federal assistance once their grievances were voiced.[15] This was accomplished by hiring professional planners and economists who created a host of major offices which used federal models to act in the interest of the Navajos. But these offices are dependent upon federal and tribal funds and are subject to the desires of the Navajo government leaders. Such conditions are often quite limiting. Funds are scant and legal assistance and lobbying are generally insufficient to fully protect the best interests of the Navajos.

Considering the resources available to the Navajo government, the offices are uncommonly effective. Directors of these offices and their staffs are dedicated and hard working. They have cooperated with the legal counsel of the Navajo government and have made several important thrusts in resource management, taxation, environmental protection, and labor relations. New precedents in federal-Indian relations have been established.[16] The Bureau of Indian Affairs has increasingly realized that the Navajo nation can manage its own affairs with federal monies.

The future is bright for the Navajo nation. Having the proper structure and mandates, it is able to guide its own development schemes. An important example of this is the

measures taken by the Division of Energy Resources, a branch of the Mineral Department, to record all known resources and to keep a running account of resource depletion on the reservation. The Division collects information on minerals exploitation from all parts of the United States through a computer tie-in with a United States Geological Survey facility in West Virginia.[17] Furthermore, the long-standing grievance the Navajo government has had with Utah International mine over the appallingly low royalty payment of 15 cents per ton might soon come to an end. The Chairman of the Navajo Tribal Council, Peter MacDonald, intends to use information and knowledge from the Minerals Department to renegotiate the lease to the satisfaction of both parties.[18]

The Navajo nation is fortunate in many respects. The reservation contains sufficient resources to create and sustain a workable and productive economy. The Minerals Department estimates that the reservation lands contain 90 million barrels of oil, 2.5 billion tons of coal, 80 million pounds of uranium and 20 million cubic feet of natural gas.[19] These resources are now being depleted by existing contracts with energy companies, yet the contracts will not exhaust the reserves. Much is left for Navajo future planning which, if well done for forthcoming generations, could form the base of a viable economy. The Navajos have enough manpower to construct and maintain many kinds of industrial facilities, and with continued improvements in higher education, the coming generations will possess enough expertise in engineering, law, economics, social sciences, and other fields to manage large-scale industries. There is a definite shift in this direction already and surely the improvements will accelerate.

But in spite of the opportunities, the Navajos have, like other Indian communities, dependency on funds and expert assistance. The federal government as a trustee of Native American welfare, has not been reliable and has often failed to adequately assist Native American communities.[20] Thus, Indian governments must use the federal monies to seek and develop the kinds of knowledge and information needed to make decisions. Navajos have taken the initiative and exercised their right to use the federal government as an instrument of aid. This was accomplished by seizing much of the decision-making powers, on some levels, and directing their own affairs in ways unheard of in the recent past. The decade of the 1970's has seen huge institutional improvements in the Navajo government. The next step is to pursue a course of action that satisfies the greatest number of Navajo people.

The offices briefly described here are only a fraction of the changes in the structure of Navajo institutions in recent years. The experts in the new offices, an increasing proportion of whom are Navajos, are affiliated with hundreds of professional and public institutions that allow massive inputs into the Navajo system of knowledge and information. The progression of knowledge and technical skill seems to be moving forward at an enormous pace. Contacts with other Indian communities with problems similar to those experienced by Navajos deepen Navajo understanding and mutual support. Regional Native American organizations, such as the Council of Energy Resource Tribes and the Native American Resource Development Federation, bind Navajos with other Indian peoples in ways unheard of in the past. This process seems irreversible. There will likely be no turning back from the knowledge and insights acquired in the 1970's. Although Native Americans remain in the power of the United States government, they are beginning to realize ways of redressing ancient and new injuries.[21]

Meanwhile, the Navajo government, and other Indian governments, are plagued periodically by serious dissension between central government and local communities. Navajo Chapters (local government units that sent representatives to serve on the central Navajo Tribal Council) in the Four Corners area have repeatedly denounced plans to bring

additional energy developments to their communities. These populations generally believe they are not properly informed of development schemes supported by the leadership in the central government in Window Rock.[22]

The Office of Program Development, through one of its units, Community Planning, assists local planning boards, composed of local leaders and federal agencies, with community development and serves as a direct channel to the Window Rock central offices. This part of Navajo government could solve many problems that plague the Navajo nation internally.

10. NOTES

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PART FOUR

THE POLITICS OF INDIAN UNDERDEVELOPMENT AND DEVELOPMENT

11

STRATEGY FOR ASSERTING INDIAN CONTROL OVER MINERAL DEVELOPMENT

Lorraine Turner Ruffing

Over the past twenty years international mineral owners have been able to assert their sovereignty over resources, collect increased revenues, take control of operations and resolve the conflict between corporate and host country goals. What chance do Indian owners have of achieving similar results?

The ability of Indian owners to increase their control over their resources and thereby increase their mineral income depends on a number of factors. Among the most important are federal policies governing development of public and Indian mineral resources, corporate power, market demand for and supply of mineral resources, the competitive position of Indian minerals and the ability of Indian owners to finance mineral development themselves. These factors are largely beyond the control of Indian resource owners.

Factors within their control are a coherent mineral policy to guide development; knowledge about the value and cost of developing their deposits; knowledge about similar agreements; and Indian government structures which evaluate information and agreements, monitor operations and plan future development.

STEP NUMBER ONE: FORMULATING A MINERAL POLICY

Indian control can be increased by the formulation of a coherent Indian mineral policy. There are two necessary prerequisites to the design of any such policy. The first step is the articulation by Indian people of the goals they want to achieve, and second, is the establishment of a mechanism by which they can participate in mineral decisions.

Among the most frequently heard goals are increased income and employment, transfer of skills and technology, creation of backward and forward linkages in the local economy, and accumulation of a development fund which can be invested for the benefit of present and future generations. Mineral activities, if properly controlled, can even contribute to the long-range Indian goals of self-reliance and diminished dependence on the federal government. Currently, there is much opposition by Indian people to mining because it is not being controlled and thus neither attains short-run benefits nor long-run goals. Such opposition could be ameliorated by allowing local Indian communities to participate in mineral policy decision making. For example, community planning boards could participate in setting levels of compensation for lost livelihoods and relocation, in planning new community infrastructure, in controlling the influx of nonresidents, and in administering development funds for new retail businesses. If mineral policies and agreements, no matter how equitable or innovative, continue to be worked out and administered without local participation, they will be of little value in the face of a hostile community. This lesson has been well learned by the new government of Papua-New Guinea. Not only did it formerly articulate its goals and design agreements to achieve them, but also it prevented the secession of the copper-rich island of Bougainville by allowing local participation.

Once a consensus on goals has been achieved, policies may be designed which attain these goals. A mineral policy should be embodied in a series of codes which regulate every aspect of mining activities. People may question the need for an Indian government mineral code in the light of the fact that there are federal regulations which govern Indian leasing, mining, environmental protection and reclamation. But these federal regulations are *ad hoc* regulations worked out on a piecemeal basis to remedy specific deficiencies. They do not form part of a comprehensive mineral policy designed to accomplish concrete objectives. Indian officials and mineral experts have criticized federal regulations as being vague, poorly enforced, or positively ignored for the benefit of private interest groups.[1]

Written codes may serve as guidelines for Indian people and their leaders so that, if they are followed, there is better chance of attaining set goals. Codes serve to reduce the possibility of concluding clandestine or substandard agreements which are not in the best interest of Indian people.

Written codes also remove much investor uncertainty about the ground rules for operating in Indian reservations. However, codes cannot completely eliminate the necessity for concluding separate agreements because each mineral deposit is different, and the appropriate financial terms must be negotiated. But codes can diminish the number of issues which must be considered during negotiations, freeing the parties to concentrate on the unique aspects of each mining project.

Among the issues which must be dealt with in the codes are mining, labor, accounting, environment, finances, legal and social questions. The following list is a nonexhaustive summary of the areas to be treated in each code:

(1) Mining: Specify obligations, rights, methods, timetables, feasibility, progress, and information on geological factors, production, costs and sales; procedures for approval for every phase of mining operations such as reconnaissance, exploration, development, production, shut-down, processing and marketing. Require performance bonds or set other penalties for noncompliance.

(2) Labor: Set levels and timetables for Indian employment, wages, and training. Set safety standards. Require insurance against accident and future illness. Require progress reports. Set penalties for noncompliance.

(3) Social: State rules governing resettlement, compensation, maintenance and provision of infrastructure, localization of buying, influx of nonresidents, establishment of a local development fund.

(4) Environment: Require impact statements, progress reports, bonds and insurance funds when appropriate. Set protection and reclamation standards for air, water, and land. Set penalties for damages and noncompliance.

(5) Fiscal and Accounting: Define "fair share" of proceeds for the Indian government and for the company. Specify the forms for taking the Indian share as well as setting minimum rates for royalties, rents, taxes, and specify their use. Specify approved accounting, auditing, and procurement, and monitoring procedures. Specify mechanism for adjusting financial provisions.

(6) Legal: State conditions for periodic contract review, termination, dispute settlement, compliance with Indian law, and limit term of the contract.

Indian officials may feel that drafting codes is a time-consuming task, and one clearly beyond the capabilities of their small staffs. Writing codes can be done relative quickly and inexpensively if Indian officials obtain assistance from the experienced staffs of the United Nations, OPEC, Commonwealth Secretariat or academic institutions. Actually, the job would be best done if Indian officials supervised the work of a small team of experts.

The codes should incorporate certain generally accepted principles, such as the ideas of stages of development. That is, no phase of mining is automatically entered into without

the necessary feasibility studies and Indian government approvals. This would prevent a company from automatically converting a prospecting permit into a mining license upon discovery of a deposit. Incentives can always be given to the company in the form of the right of first refusal or a specified negotiating period.

The mining code should insure that Indian minerals are developed in the most efficient manner. To encourage timely development, the size of the exploration or mining area could be gradually reduced and minimum investments required. Indian owners should be able to specify ore-grade cutoff and to regulate the rate of production, that is, set minimum and maximum levels. Reports on production, costs, and sales should be required to facilitate monitoring.

Clauses in current mineral contracts require preference to be given to Indians "in all positions for which they are qualified and available." Thus, if the company judges that the Indian labor force lacks the proper skills there is not obligation on their part to train or hire Indians. Technical and professional positions are exempt from the requirement altogether. Most international mining agreements stipulate preference to nationals:

> However, in most agreements it is subject to the availability of qualified local personnel in provisions such as 'preferences are to be given to nationals to maximum extent consistent with efficiency and economy.' As long as the transnational corporations' judgment as to qualification and the efficiency are conclusive, as in many agreements, such an obligation is generally not effective.[2]

The labor code should insure Indian preference by setting quotas and requiring training programs well before operations begin. Time limits on the fulfillment of Indian quotas should be set. These quotas should apply to skilled, unskilled and professional positions. Progress reports on compliance should be required.

Usually no distinction is made between local Indian labor and nonlocal Indian labor. Small, rural communities rarely benefit from mining projects because the local labor force lacks the appropriate skills and the jobs are given to outsiders. The influx of nonlocals, even if other Indians, drives up prices and actually reduces the real income of the local population. The labor code should give the local labor force first preference by requiring the company to set up a hiring office in the local community and send applicants to a training program. Local hiring would diminish the number of nonlocals and thus reduce the demand for increased community services.

The effects of the boom-bust cycle could be controlled through the social code. Local inhabitants should be compensated for lost land and livelihoods. Ideally, they should be the first recipients of training and jobs. The costs of increased services must be shared among the company, federal government, and nonlocal residents. A business development fund should be created to help local entrepreneurs meet the increased demand for retail and wholesale goods and services. Otherwise border towns will capture the secondary employment and production generated by mining. Principal operators, contractors, and subcontractors could be required to buy locally. A portion of the funds should be invested in a local job-creating enterprise which would help maintain community income and employment after the mine shuts down.

The environmental code should require impact statements before operations begin. Progress reports on environmental quality of air and water should also be required. Protection and reclamation standards for air, water, and land should be specified. Bonds and insurance could be required where impacts cannot be determined with certainty. Penalties for damages and noncompliance should be set.

The fiscal code must define what is meant by "fair share" or "fair market value." The goal of any resource owner is to capture the value of the resource, or what economists call

its "resource rent." The developer, on the other hand, wants to earn a reasonable rate of return on his invested capital, and to be compensated for any risk. A further protection for the resource owner is to set a certain minimum royalty based on productive capacity and market value to be paid whether the company produces or not. Taxes could be levied to allow the company to make a reasonable rate of return, and the Indian government would be able to capture any excess profits.

The code should set up a mechanism for allocating mineral revenues between Indian community consumption and investment. An investment fund should be established to insure that a certain portion of the revenues are reinvested for the benefit of future generations. Sufficient mineral revenues should be invested in reproducible capital or in the development of another resource in order to maintain earnings on the capitalized value of the mineral resource.[7]

The fiscal code should stipulate the methods of accounting to be used, the procedures for procurement and deductions, where the books are to be kept, who has access, what financial and company-wide reports are to be submitted, to whom, and when, and the procedures for auditing.

Certain legal issues, such as amending the agreements or deciding who would enforce penalties or arbitrate disputes, should be specified in the legal code. Usually, developing countries insist that their own courts be used.

STEP NUMBER TWO: BUILDING AN ADEQUATE INFORMATION BASE

The second step to increase Indian control is the building up of an information base. In order to place a value on their mineral deposits, Indian owners need to know the following:

(1) Geological information about mineral deposits in terms of size, depth, density, configuration, and ore grade.

(2) Cost information, development and operating, about different mining techniques which are appropriate for their deposits.

(3) Market surveys which identify potential customers, transport costs, and product prices.

In addition, Indian owners ought to have access to corporate histories which describe the company's position in the industry, behavior, access to other supplies, interest in the mineral, similar projects and terms of agreements made in the past. All the information may be acquired through the United States Geological Survey, United States Bureau of Mines, the Department of Energy, Securities Exchange Commission, Federal Trade Commission, and the United Nations Centre on Transnationals.

There has been a reluctance on the part of Indian owners of minerals to acquire geological information by using the United States Geological Survey exploration funds. Indian officials express the fear that since this information is obtained with public funds, corporations will have access to it. The simple truth is that the corporations already have the information. Without finding out what everyone else knows, Indian owners will remain severely handicapped at the bargaining table. Only when the value of the deposit is known to all parties, will Indian owners be able to claim their fair share.

The absence of exploration information also justifies corporate demands for high returns to compensate for the risk in an unknown venture. Indian owners could eliminate the risk factor by doing their own prospecting and exploring prior to opening negotiations. While this would eliminate the bonuses that companies pay for exploration rights, possession of such information would increase the overall returns of reservations with valuable mineral deposits.

The World Bank recently announced its intention to offer loan assistance to developing countries, to finance oil survey work, exploratory drilling, and production. Large energy

corporations, such as Exxon, immediately protested because increased knowledge and ability for autonomous development by developing countries threaten corporate bargaining power.

There is much to be said for cooperation between various American Indian governments. Presently, there is a reluctance among Indian members of the Council of Energy Resource Tribes (CERT) to share the terms of their mineral agreements. Such an attitude confirms the continued existence of mutual suspicion and hostility among Indian communities, and also a lack of understanding of the real lesson of OPEC. Part of OPEC strength derives from the willingness of the member countries to share information on corporate operations and policies. OPEC members found this function to be especially important to them because of the general unwillingness of oil companies to supply them with data on technology and markets. Corporations are no less unwilling to aid Indian owners.

STEP NUMBER THREE: CREATING INDIAN GOVERNMENT ORGANIZATION

The third step to increase Indian control is to create Indian government organization which can plan development by collecting and evaluating information, and which can initiate, operate and monitor projects, and which can recover mineral revenues for the benefit of the Indian people. Some Indian owners already have Energy Resource Divisions, Tax and Environmental Protection Commissions, Coal Authorities, and Research Groups. Almost all assemble incomplete data to aid their negotiators. Some are writing environmental and tax codes.

There are at least three basic functions to perform in mineral development: planning, implementation and monitoring. Planning and implementation should be consolidated into one unit. Monitoring could be distributed among several because very diverse areas must be covered.

Most developing countries have established state mineral corporations to develop their resources. The state corporation's main objective is to search for and develop minerals under effective national control and to maximize the final benefits from their eventual exploitation. To facilitate this objective, the state usually gives the corporation exclusive jurisdiction over all the national territory. The enterprises are usually public corporations with the following characteristics:

(1) They are separately established by statute.

(2) Each has a separate legal personality.

(3) Their administration is in the hands of a board appointed by the government.

(4) Their employees are not civil servants.

(5) The basis of their finances is permanent revenue from earning assets. Some can raise loans. They balance revenue and expenditures, and any profits are ploughed back into the development of the enterprise. They are commercially audited. Their capital is owned by the state.

(6) They are responsible to the government through the appropriate minister and are subject to his general direction.

(7) In their day-to-day operations, they are like other private entities.

Public corporations have a dual nature. In their commercial and managerial aspects, they resemble commercial companies. But insofar as they fulfill public tasks, they are subject to government control. A council of ministers usually approves the corporate budget and its decisions to explore, drill, and to establish operating companies. Government control is also exercised over associations with private companies and the types of contracts entered.[4]

The model of the public corporation could be adapted to serve Indian needs. An Indian government corporation could be incorporated under Indian law as a separate legal entity

vested with mineral rights. Board members should be chosen for their knowledge of the mineral industry and their qualifications could be established by statute. They could be appointed by the Indian government executive or the council. The corporation could be divided into three or four major units.

MINERAL DEVELOPMENT CORPORATION
BOARD
MANAGER
SURVEY PLANNING OPERATIONS FINANCE

The survey unit should conduct an on-going geological survey of the reservation to discover remaining deposits. Known deposits should be explored. The unit could either do its own survey work or contract it out. Once the survey unit completed its analysis, the results should be sent to the planning unit for evaluation. Here the geological data could be combined with production and market information to determine the feasibility of each deposit.

One of the primary functions of the planning unit would be to determine the optimal rate and extent of development of known deposits. Should mineral development be immediate, rapid, widespread or immediate, moderate, localized or should it be delayed? Such decisions should be made based on adequate information using a form of social cost-benefit analysis which would take into consideration all costs, not just out-of-pocket production costs, and all benefits, not just mineral revenues. Preferences regarding the number of non-Indian residents, the total number of acres devoted to traditional activities, the number of acre-feet of water to be allocated to mining could be expressed in the form of constraints imposed on the extent of mineral development. To undertake a comprehensive evaluation of a deposit or a series of deposits, the unit would have to make some assumptions about how the development would be carried out. Would it be done by an Indian mining company or in conjunction with a private partner or contractor? A few of the possible combinations are:

Mineral Development Corporation–Indian Mining Company
Mineral Development Corporation–Indian Mining Company–Subcontractors
Mineral Development Corporation–Private Corporation (Joint Venture)
Mineral Development Corporation–Private Corporation (Service Contract)

Once the social cost-benefit analyses of the different deposits under different organizational arrangements is performed, the unit presents a set of options to the board and to the local community planning boards. They could accept, reject, or modify the proposal and forward it to the Indian government council. Once the council approved the general proposal, it would be returned to the corporation for action. The board and the operations unit could then enter discussions with an Indian mining company or private companies. Their negotiations with outsiders would be guided by the mineral codes and the general objectives outlined in the approved proposal. At this point, the financial unit and other Indian government entities, such as the Environmental Commission or the Labor Relations Office or the community planning boards, could be brought into the discussions in order to draft the specific details of the agreement. The final agreement would be resubmitted to the council. After approval, the operations unit would continue to work closely with other Indian government entities to analyze company mining plans and to recommend action to the board. Operations would also monitor all company activities for compliance with the Indian government mining code and mining plan.

Mineral revenues accruing to the Indian government would probably be divided among the following uses:

(1) Corporation administration and activities.
(2) Indian government services including infrastructure.
(3) Investment: a. in the mineral corporation; b. in productive enterprises in the mining communities or elsewhere in the reservation.

After corporation expenses are met, the split between services and investment is a political decision. Some guidance could be given by the fiscal code such a a 50/50 split. Revenues for investment might be put into a special development fund where certain percentages could be earmarked for reinvestment in mining and for investnent in mining communities or elsewhere.

The financial unit of the corporation would be responsible for collectio of all mineral revenues and their distribution among various recipients. The unit could also enforce the fiscal code, and receive all financial reports, monitoring all payments fom leases and agreements, and conduct audits. The financial unit might also draw up a corporate budget which would include new investment for board approval.

The remaining codes could be enforced by the appropriate Indian government entities: For labor, the Labor Relations Office would be responsible; for environment, the Environmental Protection Commission; and for social aspects, the community planning boards would enforce the code. Legal questions would be handled by the Indian courts.

The Indian mineral corporations should specify for each new mineral project the most favorable method of development, whether it be autonomous, joint venture, or service contract.

CONSIDERATION OF JOINT VENTURE AS AN INSTRUMENT

In the early 1980's, obtaining a majority equity interest through the creation of a joint venture was viewed by oil-producing countries as a means to increase revenue and control as well as to promote a transfer of technical and mangerial skills. The net financial gain to the host country depended greatly on what the country had to pay for such equity. The least favorable terms obliged the host country to pay the going market value for its shares. The favorable ventures considered the grant of mineral rights and the construction of infrastructure as payment in kind. The burden was also eased by the right to pay the equity share from future profits[3]

A majority equity position conferred on the host country the right to nominate a majority of the board members, a share of dividends, and in the most advanced arrangements, the host country still retained its ability to tax corporate income. However, a number of factors denied the host country effective participation in board decisions. Sometimes the host country shares were so classified as to diminish host country voting rights, or the foreign partner retained a veto power over certain issues, or meetings were infrequent and host country representatives lacked the information and skill to shape board policy.[4] In many joint ventures, the host country entrusted the management of the enterprise to the foreign partner. Often the board became a figurehead while the real decisions were made by the foreign managers.

A United Nations study on transnational corporations found that the managerial control exercised by the foreigner was reinforced by subsidiary-parent company transactions. That is, the operations of the local subsidiary were geared to serve the parent company rather than the enterprise itself or the host country. Since the foreign partner was in charge of operations, he was able to siphon off the profits by such devices as the following:

(1) Rapid repayment of principal and interest on loans from the parent company which were given in lieu of equity contributions.
(2) Excessive payments for parent company services and inputs.
(3) Long-term sales contracts to affiliates at low prices.

(4) Use of profits for reinvestment rather than dividends.

Because joint ventures did not provide the increased control or revenues sought by developing countries, they were superceded by the more radical agreements now current.

Indian owners are beseiged by energy companies desiring to develop Indian mineral resources. Some of these companies have proposed joint ventures. Indian owners are immediately at a disadvantage because they have not participated in the designing of these proposals and the proposals are, of course, structured to the company's advantage. The proposals generally follow models developed in oil ventures in which the two partners are private corporations. They do not follow the joint ventures concluded between sovereign governments and oil companies.

Joint ventures among private corporations are formed for a number of reasons, such as access to more working capital, access to supply for a downstream operation, and a desire to spread the risks involved in the operation. Most companies offering joint ventures to Indian owners do not need Indian capital, but they do need Indian mineral resources. The risk element, though always present, could be eliminated by prior exploration and drilling by the Indian owners.

Joint venture agreements between private corporations usually contain the following standard provisions:

(1) Agreement on the percentage of participation in costs and profits.

(2) Establishment of a separate legal entity following the discovery of a commercial deposit.

(3) Agreement concerning the obligations of all participants for construction and financing, for development and production facilities, and for marketing the product.

These standard provisions have been carried over to Indian joint ventures despite the fact that corporations are dealing with governments. For example, in a 50/50 joint venture, Indian owners are expected to contribute half of all development and operating costs. If they do not have the capital, the corporate partner will put it up for them, taking repayment out of profits. In joint ventures among corporations, this often happens, and the contributing party is repaid the amount advanced on behalf of the other plus a reasonable rate of interest. In some Indian joint ventures, the corporate partner will reclaim from the Indian profit share 200 percent of what it advanced. If the rate of repayment is relatively rapid, this can amount to a very high rate of interest. To date the corporate partner has refused to grant Indian owners an equity share based on the value of the mineral asset or infrastructure used in the project. At least two international joint venture agreements give the host country an equity share in exchange for the mineral asset: Botswana-De Beers Orapa Expansion Agreement and the Panama-Cerro Colorado Agreement. Numerous other agreements give the host government credit for infrastructure.

Another major weakness of the proposed joint ventures is the structure of the management committees. In the typical 51/49 venture, decisions are made by majority vote and the Indian members are outnumbered. Even with a 51/49 equity split, some host countries have obtained equal representation and even veto power over some crucial decisions. In most Indian joint ventures, the management committee meets semiannually, which is insufficient to remain informed of the operator's activities or to exercise any meaningful control over them. The purpose of the semiannual meetings is to review capital budgets and cost of production and to approve development plans. Unless Indian members have been analyzing the monthly production and cost statements and are aware of market prices for supplies and products, they will not be able to affect board policy.

Indian owners have been lured into joint ventures because of their legitimate desire to increase revenue and control. Unfortunately, as the joint ventures are presently designed, they might not attain either goal.

INNOVATIVE AGREEMENTS, CONTROL AND REVENUE

Some Indian owners have been working out more innovative agreements in which they do not acquire a corporate partner, but merely contract out the work. This prevents the corporation from obtaining any interest in the mineral or the land. Not only will Indian sovereignty be maintained but also state severance tax, sales tax, and property tax may be avoided. State governments often collect more in mineral taxes than Indian owners do in rents, royalties and wages.[8]

For example, the Crow government has concluded a service contract with AMAX under which they will retain ownership of the coal while the company will mine and market it for a fee. The amount of control the Crow government will be able to exercise over AMAX is a direct function of their ability to monitor company operations and to enforce the terms of the agreement. Crow government revenues will depend on how the fee is calculated and again on their ability to monitor costs of production, amount of production and sales prices. While good agreements are half the battle, an adequate Indian government structure capable of enforcing the agreement is essential.

CONCLUSION

Indian control over mineral development and revenues is limited by federal policy, corporate power, and market conditions. However, there are a number of steps Indian owners may take to increase their control. Formulation of an Indian mineral policy will establish goals and the means to attain them in the absence of a coherent United States federal policy. The creation of an information base and Indian government organization capable of planning, implementing and monitoring development will diminish Indian vulnerability to corporate power.

11. NOTES

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12

PLANNING INDIAN ECONOMIC DEVELOPMENT

Phil Reno

Economic development is the goal and the frustration of less-developed nations in which live more than half the population of the world. The United Nations planned the 1960's to be the "Decade of Development," but this half of the people of the world were as desperately poor at the end of the decade as they had been at its beginning. The drift of rural poor to the cities was becoming a flood by the end of the decade, and half or more of employable people in the poor nations were unemployed or underemployed, as they had been at the decade's beginning.

Half the world's population was, moreover, many more people. From 1950 to 1975, the world's population had grown by 1.5 billion, to a total of four billion people. In the following 25 years, from 1975 to the year 2000, the world population is expected to grow by another 2.3 billion, to a total of 6.3 billion.

The decade had seen development mainly in the already developed countries and some of the intermediate countries. In most of these countries the incomes of the upper 40 to 50 percent of the people has risen considerably. From the point of view of this fortunate minority of mankind, econnomic development is rolling along. The lower income people of these countries did not fare so well, in part because the countries were spending 10 to 20 percent of total national income on armaments and military expenditures.

Before plunging along the development vector planned by and for this fortunate minority, at most one-fourth of the world population, we should look at the costs and benefits of the development they plan. What are the costs and who pays them, and who gets the benefits? We should not only look at who will pay and who will benefit in present generations, but we should also think about whether future generations will pay the costs for benefits enjoyed by present generations.

American Indians are among the world's two billion poor. Many were driven by European conquerors into the hemisphere's least productive lands—"Regiones de Refugio"—as Aguirre Beltran called them—the jungles, the Andean altiplano and the semiarid coastal and intermountain reaches.[1] Those not "relocated" (a modern euphemism for age-old wrongs) were restricted to lands far less ample and productive than the lands where they had traditionally gained their livelihood. Whether in a segment of traditional lands or displaced to marginal lands, however, they continued the ecological relationships and the community organizations that had sustained them for so long.

In 1962, the Inter-American Indian Institute compiled census data and estimates of American Indian populations and aggregated some 18 million people living in essentially pre-Columbian communities.[2] The technology and confined resource base of these community economies will not support their growing populations, and the excess Indian people are joining the world migrations to the cities. There they piece together shacks in the monstrous favelas, ranchos, callampas and barrios that surround the great Latin American cities. Even in the relatively favored United States Indian populations, the 1970 census found less than half of Native American people living on Indian reservations.

Indian and mestizo people living in the Latin American city slums suffer the physical and psychological malaise described by Oscar Lewis:[3] depersonalization, anomie and intergenerational conflict, and the personal consequences of violence, drunkenness, family disruption and a matrifocal basis of family life, and the rest of the "culture of poverty." To survive this social disorientation, Indians try to recreate in the city slums the institutions of the communities they left behind, and set out on the process of amalgamation into the urban proletariat and the lumpen elements hustling and scrounging for income of any kind.

A study by the International Labor Organization (ILO) found more than 110 million people in Latin America living in "serious" poverty. In rural areas, four out of five Mexican children were smaller than their counterparts in middle-class city areas. In Haiti, children earn pennies as "foot washers," washing the feet of those who have no shoes, who in turn shine the shoes of those who wear them.[4]

These shocking even though commonplace sights in Latin America and Caribbean countries are the inevitable consequences of economies skewed by the countries' elites to markets of the industrialized countries, the United States market in particular. Other brutal illustrations include the Bolivian Indians annihilated in the mines to send first gold and then tin to Europe and the United States; protein (fish meal) produced by Peru for United States cattle, while Peruvian children suffer severe protein deficiency and the list goes on and on. Even in the great industrial counties, one-fourth or more of the people live in poverty, and the "Heartbreak House" that was G. B. Shaw's England has become the common destiny of industrial societies of western Europe and North America.

Who can claim that life in the pre-Columbian Indian communities was not happier? Per capita calorie intake in precolonial societies was higher than in today's urban and rural slums, and a good bit higher than in especially deprived places such as northeast Brazil and Haiti. Marshall Sahlins concluded after exhaustive study that even the still existing preagricultural "hunters and gatherers work less than we do . . . their food quest is intermittent . . . lesiure abundant . . ."[5] In modern societies, as John Stuart Mills was fond of saying, "no labor saving invention has ever saved anyone any labor." Anyone who worked with the invention, that is; Mill overlooked the fact that the machines with which others work long hours save labor by English gentlemen.

Yet few today would want to go back to early technology, and even fewer could survive without modern technology. Neither was Neolithic life as carefree as Rousseau and some others saw it. Nevertheless, the preindustrial communities provided lives of satisfaction and no little joy, and in these communities and groups mankind survived for a million years or more. Looking back at those times gives us a view of the means of survival and human welfare in the modern world, a world in which the war brinkmanship which John Foster Dulles and Henry Kissinger played so recklessly has been extended to resource brinkmanship. The production of "ilth," as John Ruskin called the pollution and degrading products and by-products of industrialism in England,[6] is pushing the world's potable water supplies and atmospheric cover to the brink. The National Academy of Science warns us in a recent report, moreover, that "man faces the prospect of a series of shocks of varying severity as shortages occur in one material after another, with the first real shortages perhaps only a few years away."[7]

Like Penelope, the economies of Western societies must undo by night the "ilth" they produce by day. Unlike Penelope's labors, however, the "ilth" produced by Western economies races ahead of pollution cleanup and control. Nuclear waste in particular and the threat of nuclear war has pushed the world's cleanup requirements beyond any now known possibilities of remedy. Nuclear wastes which will be dangerously radioactive for more than a thousand years are dumped into oceans containing a large part of the world's food resources.

Our compulsive consumption societies and military machines are reversing the processes of evolution. Living species are being exterminated, from microorganisms now needed in medicine to the whales, the largest of living creatures. The spread of deserts has been noted increasingly in recent years[8] and other losses of cropland on an even larger scale are encroaching on chances to feed the world's population, doubling now each 35 to 40 years. The logistics of supplying and manipulating huge urban populations increasingly outstrips management capability.

It would make more sense to plan to reverse the growth of cities and the creation of filth, and to stop destruction of the world's web of life. Growth and profits and not good sense are, however, the purposes of the economic system of two-thirds of the world. Indian societies nevertheless have some latitude to plan sensibly, and can point the way to planning that would make sense for the national society. The first step in planning is to define our goals, to state what we are planning for. The necessary goal of Indian planning today was foreseen by Chief Seattle, who looked at the colonizer's destruction of nature and saw "the eagle gone . . . and the thicket . . . and the forest air heavy with the scent of many men. It is the end of living," Chief Seattle said, "and the beginning of survival."

In view of the demand for Indian resources and the assault on Indian values by outside forces, survival must be the basic goal of planning for Native Americans in the United States and Canada. Means of survival is the means through which man survived for the millenia before the beginning of societies in which a few people live on the backs of the many. Over the vast span of human life before the assent of privilege, the means of community survival was production aimed at satisfying community needs, with ceremony and ritual giving joy and purpose to living. The Allyus in what is now Peru and Ecuador may have been the purest form of community organization, but the Sioux society's chivalric values gave quality and grandeur to Sioux society, where status depended not on what you had but what you gave away.

Our society's onrushing crisis is a crisis of values, and of the value of economic activity in particular. In our society, as Charles Dickens said, "the Good Samaritan was a bad economist." Since the Hard Times that Dickens wrote about, the monstrous inequalities of the world have become intolerable. The essential values for survival are those making for mutual aid, for equity, and for reverence for the web of life. Indian economic planning can reassert these values and in doing so can point the way to survival of the world society. It may not be too late to do so. Without different goals, however, and new structures to achieve them, it is hard to see how the societies of the western world can survive.

The problems are profound: mounting pollution, and especially the production of vast quantities of radioactive waste; vital resources nearing exhaustion, with their continued exploitation exhorted by media in the service of corporate profits; the risk of nuclear war and the proliferation of nuclear weapon capability; and underlying every risk the exponentially increasing population of the world's poor.

For more than a century a just and rational control of production and a more equal distribution of wealth has been "an idea whose time has come," said to be an irresistable force in human affairs. Throughout this century and across most of the world the privileged sectors of society have mobilized power to withstand the idea of a just society. No one nowadays seems to doubt Mao's view of where power comes from—out of the muzzle of a gun. The mounting crisis of the world may only be solved, however, by a change in the locus of power, to power that comes out of the conscience of mankind, and a coalition of this conscience in support of the poor and the oppressed and their struggles for a just society.

Native Americans in the United States are surrounded by, and may be trapped within, the world's most wasteful society, dominated by tremendous multinational aggregates of

wealth and power. Native American resources are not, however, completely at the mercy of demands by the surrounding society. Indian governments and communities can plan their own development if they set their own goals and hold to them in planning for the future. The foundation of plans for Indian societies and a world society that can survive involves: (1) Land-use planning, (2) Resource conservation, (3) Equity, and (4) Communities' control of their own destinies.

(1) *Land-Use Planning.* Land-use planning should be the heart of economic planning throughout Indian country and no doubt throughout the world. Together with planning use of the land should go planning to improve the quality of rural life. As a former president of the National Farmers Union told a Pennsylvania Planning Conference:[9]

> We need to rebuild and conserve the soil; we need to reforest great areas of this nation . . . We should develop agri-service centers around the idea that we are going to develop good quality of living opportunities before we try to bring in new industries . . . we aren't going to get people to stay out in rural areas unless there is equality of opportunity in terms of housing, education, health and other services. . . .

Land use in Indian country is subject to custom and tradition and successively to family, community, Bureau of Indian Affairs, Indian government and Department of Interior controls. Planning will have to involve people at every level. Of all Indian planning needs, land-use planning is at the same time the most urgent and the most difficult. Investment needed for Indian soil and range restoration runs into billions of dollars and investment will be for naught without involvement of communities affected.

For more than a century Indian farmers and livestock owners have stood off the modern-day enclosure movement that threatened them. Through all the events that shook the outside world, they maintained their traditional value system tied to family living, community reciprocity and life on the land. More than one-half of Indian families living on reservation land still have livestock and perhaps two-thirds of all Indians still live rural lives. How the Indians bring about the adaptation of modern technology to rural life can be of value to many areas of the world.

"Everywhere indigenous people are being displaced from their traditional, independent means of livelihood in industry and agricutlure, and being thrown to the winds," says Claude Alvares, Director of the Rural Study and Transformation Center.[10] He sees a mounting "systems overload" as the world presses on the economic limits of certain resource stocks, and turns to substitutes which are costly and involve hazards only faintly understood.

(2) *Resource Conservation.* Compulsions for consumption which are fostered among upper and middle-income classes in industrial societies make a mockery of appeals for energy resource conservation, and the world population explosion has made a prophet out of Malthus. Respected modern scientists, Josie de Castro and Margaret Mead among them, have pointed out that hunger is the cause of the population explosion, and higher living standards for the world's poor is the means of restraining it.[11] The flow of wealth must be reversed so that the gap narrows between rich and poor; otherwise the apocalyptic restraints on population growth—famine, pestilence and war—will have increasing work to do.

Control over resources and technology—the historic sources of wealth and power—holds the answer. People of rich countries are consuming resources at rates that increase exponentially per capita. People in poor countries consume little if any more per capita, but population numbers increase exponentially.

(3) *Equity.* A report from the Christian Science Monitor News Service explains that "Every year 220 million Americans waste more energy than is purchased by the three billion people in Africa, Asia, and Latin America."[12] The burden of the report is that the world's well-to-do are squandering the world's nonrenewable energy resources, while without more energy in the poorer countries there will be no increase in production of food and other necessities of life for the increasing numbers of people. American Indians are part of this world paradox. Their energy resources provide heat, air conditioning, and light for distant cities and factories, while many Indians cook over wood fires and have neither electricity nor running water in their homes.

(4) *Communities' Control of Their Own Destiny.* Western economics are dominated by gigantic corporations which manipulate factor and product markets. In this environment, Indian planning for self-determination will have to combine sophisticated planning technology with traditional Indian insights. Planners will have to take on the task for which MacBeth summoned extrasensory consultants, to "look into the seeds of time, and see which ones will grow and which will not."

A model is needed to hold development on the rocky road to self-determination, rather than sliding onto the easy road of selling resources to others to develop. Before the Long Walk the Navajo had developed a prototype of such a model, incorporating new technology into the Navajo institutional framework, and adapting their institutional framework to take advantage of the new technology.[13]

And so the questions about Indian economic development come down at last to the basic question in all social affairs, the question of human resources—in this case the Indian people and the choices they make, and their skills, strength and will to carry their choices into effect. These issues in Indian economic development are a microcosm of the issues in world development. Thirty years ago, John Collier began his classic about *The Indians of the Americas* with the often-quoted words, "They had what the world has lost. They have it now." What the world has all but lost, and representative groups of Indians still have, Collier went on, is "the ancient, lost reverence and passion for human personality, joined with the ancient, lost reverence and passion for the earth and its web of life."[14]

The web of life was symbolized in "the sacred hoop and tree of life" that Black Elk was shown at the center of the world, "and the goodness and beauty and the strangeness of the greening earth, the only mother." The choice that Black Elk recalled years later in telling of his vision was the choice in values that Indians can offer to the world, and day by day it is clearer that this choice is the way of life. Indian plans for the future can make this choice, and turn to "the good red road, the shielding tree" that Black Elk saw.[15]

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13

CHOICES AND DIRECTIONS

Roxanne Dunbar Ortiz

Two broad ideologies have emerged from Indian leaders and organizations in response to federal and corporate programs for Indian economic development. The Navajo, Crow, Laguna, and other Indian governments favor profiting from the income produced by exploitation of mineral resources and profit maximization. The Navajo plan includes specific strategy to make mineral resource development a short-term basis for major income while building Navajo government-run enterprises.

The other broad ideology is one opposed to industrialization of reservations by non-Indian intruders or by Indian governments. Particularly, coal strip-mining and uranium mining and milling are opposed. This ideology opposes corporate intervention in the reservation, but also opposes Indian government involvement in mining and industrialization.

The first ideology, supporting reaping immediate profits, has not included implementation of planning goals which would make corporate intervention temporary and useful for long-term development. In some cases, the second ideology, opposing industrialization, has led to romantic notions which tend to gloss over the present realities of Indian life and welfare and avoid considering the choices available to Indian governments, identifying technology and industrialization as inherently evil.

One theorist on the situation of Third World economic development suggests that compromise should be seen as a stage in a process, a breathing space, not as an end or outcome. Compromise should be a tactical phase, not the purpose of a plan.[1] The problem with any development strategy that would pose the American economic system as the goal for Indian communities, setting aside ethical and cultural questions, is the unlikely possibility that such an economic structure could be realized in the reservations. Rather neocolonialism would probably result from such development strategy.

The conditions needed for the development of a capitalist economy are, essentially, proletarianization of the population, or destruction of their means of production, so they must seek wage labor, and the accumulation of capital. Only in western Europe, Japan, and the United States have these happened, and, then, over a long period of time.[2] Emphasis placed on general, psychological questions of lack of Indian "incentives" and barriers to the inflow of capital from outside the reservation skirt the real issue. The concrete problems of marketing and market relations and formation, distribution and utilization of surplus must be analyzed for development strategy to be real.

Transnational corporations, such as the energy corporations with leases in Indian reservations, have limitless capacity for internal financing and easily escape political regulation by governments, and especially by relatively powerless Indian governments. Development, directed by these corporations, is unlikely to lead to the changes required for economic development and social justice. Corporate control deepens the gap between the traditional and modern sectors and even worsens actual living conditions for the majority of the people, though a tiny elite may be created which is dependent on the external force.

Indian governments have little choice but to limit the power of the transnational corporations to the greatest degree possibly, by strengthening Indian sovereignty through taxation and jurisdiction, and by controlling their resources, and by alleviating poverty with its attendant conditions. Diversification and integration are essential for long-term development and independence from corporate control over policies. One-crop economies can be fatal, such as cattle production in the northern plains. Most fatal, however, is sole dependence on valuable nonrenewable energy resources for quick profits, without a carefully planned development strategy.

Nevertheless, complete rejection of industrialization and modernization or opposition to Indian governments independently developing reservations is unrealistic. Industrailization does not necessarily require the American mode of development as a goal, nor must it create disparate classes and destroy traditional economies and cultures. Industrialization may be planned in such a way as to benefit the whole population equitably and humanely, though, under the circumstances, rather rapid development, under tight Indian government control and planning seems necessary. Also, use of much of the standard existing American financing, technology, federal aid, technical assistance and markets is required to a greater or lesser extent.

Europeans and Americans industrialized beginning with light industry and gradually developed heavy industry, and then electronics. Some have suggested that such step by step procedure is necessary for economic development anywhere, anytime. Schumacher, whose *Small is Beautiful* ideology is very popular writes:

> Every complexity . . . is the result of evolution . . . Education does not jump; it is a gradual process of great subtlety. Organisation does not jump; it must gradually evolve to fit changing circumstances. And much the same goes for discipline . . .[3]

Schumacher proposes "intermediate technology" or "appropriate technology" and "help to those who need it most" as solutions. Though, like all truisms, Schumacher's gems of thought are true, there are problems in a situation of underdevelopment which he does not deal with. The Navajo Development Plan, contrary to Schumacher, proposes "placing its economic dollars not where the problems are, but where the solutions are."[4] The "small is beautiful" strategy does not deal with the fact that the "evolutionary" process of industrial development for the developed countries not only took time, but also the plunder of half the world for the raw materials and cheap labor of capital accumulation. The fantastic expansion of western European states and of the United Staes can only be analyzed in terms of colonialism and imperialism, not as a "natural, evolutionary" development. Underdeveloped areas cannot develop in the same manner on any time scale, and they must develop much better social and economic conditions rapidly to survive.

Industrialization and development require enormous capital investments and sources of accumulation. The private, capitalist way of accumulation cannot ensure this, if it were even possible for Indian communities. What is necessary is concentrated social accumulation, full participation of the people and Indian governments, and credits, loans and grants from United States agencies and from international sources. The limited availability of such outside resources necessitates their being used in an optimum manner to ensure the fastest possible development of the entire reservation economy. This requires central planning restricting spontaneity of the economy. Only measures that include every aspect and the whole of the economy, which means the full participation of the people and communities, can change the situation.

Generally, Indian leaders and reservation citizens have expressed the necessity for development programs which will produce secure, healthy, and productive lives for Indian

people today and insure such conditions for the future generations. Furthermore, the people do not want destroyed in a short time the values and relationships which their ancestors have fought and died for during these hundreds of years. If that is the price of development, most Indian people will refuse to pay. An overall development strategy to reach these goals is the major concern of Indian peoples, since the present situation is nearly catastrophic and future existence is not assured.

Surely, many of the choices made by Indian peoples and leaders will not be ideal ones, for ideal solutions are not available at this time in history. Final solutions to the perpetuation of poverty and deprivation in the United States and around the world are the larger goals that many peoples work toward.

Though the problems of Indian peoples and the underdeveloped character of the reservations are externally caused and perpetuated, only Indian people, with meticulous planning, and with support and aid from outside, can make immediate changes which bring genuine economic development and improvement in the lives of the people. Many Americans believe that in this process, American society itself will be profoundly changed.

Indian government management of resources and planning have often been severely criticized by Indians and non-Indians. In order to understand the weak position of Indian governments, the characteristics of underdevelopment must be the context.

Many terms have been used to describe the economic and political situation of Indian communities and nations in the United States. Indian reservations have been termed colonies, internal colonies, and [illegible] to distinguish it from [illegible] Others have described it as [illegible] a capitalist economy that is both political and economic and which began with conquest, subjugation, and has continued for a century [illegible] racism and social discrimination, overt or implied, as a main contributor to the maintenance of neocolonialism, racism as both partial cause and effect.[1]

Racism tends to let the culprit off the hook and to blame the victim for his situation. Here is the Bureau of Indian Affairs assessment of the main problem with reservation society:

> Perhaps the greatest single element impeding the development of solutions to the problems facing the American Indian has been the evolution of a reservation subculture which transcends individual tribal lines. This subculture has produced individuals who are apathetic, have low self-images tend to be failure-oriented, and feel that they have little or no control over the future. Bare subsistence is accepted as the normal condition of reservation life, poverty is a self-fulfilling prophecy.[2]

The idea of the stagnant, traditional society is very common among technocrats when looking at the colonized, underdeveloped world. Individualism and private interest are the criteria used when coming to such conclusions. Lack of individual entrepreneurship is regarded as the main characteristic of underdeveloped colonial areas inhibiting development. Native culture, or reservation culture, is said to be in the way. Idealized individual entrepreneurial qualities are posed as ones that must be created as absolute prerequisites for development. Desirable attitudes to be created include "market" incentives, profit incentive, willingness to accept risks, eagerness to be trained for industrial, dangerous and "dirty" jobs, and eagerness to engage in and promote technical, rather than social progress.[3]

The American economist W. W. Rostow actually sees value in the effects of colonialism and racial discrimination for indigenous peoples historically, in that these effects [illegible]

"social tension," providing the beneficial role of "awakening" or setting into motion some "positive" psychological motivations toward capitalist development.[8] The problem, however, is that underdevelopment has been created by capitalist development through colonialism, and underdevelopment spontaneously reproduces itself, whatever the peoples' "attitudes" are. The reproduction has an autonomous nature associated with the external factor of colonial penetration and control. The distorted character of the reservation economy itself provides the basis for maintaining dependency, creating increasing gaps between the reservation economy and well-being and that of American society. Income redistribution through the creation of jobs, through aid, grants, or contributions is illusory, with short-term effects. Growth does not necessarily imply development. In fact, spectacular growth may occur under certain conditions without development taking place, such as in Saudi Arabia, Iraq and elsewhere.

The Navajo plan and other development plans in formation seek to eliminate "dualism," and to merge the different socioeconomic divisions, integrating the separately developing tendencies. These plans must seek to create linkages between sectors of the economy, thereby increasing the multiplier effect at the same time decreasing the drain out of the reservation.

The allocation of investments, the determination of their direction, the nature and extent of investments, and other carefully planned strategies necessitate central coordination by Indian governments and overwhelming support of the people. The nature of investments by Indian governments must be geared to [illegible] employment [illegible] economic [illegible] capital is scarce.

A common solution to [illegible] development of [illegible] enterprises, which might produce few jobs, and labor-intensive enterprises. Especially important is the need for Indian governments to subsidize the labor-intensive traditional economy which would increase productive work and community self-reliance. The latter will have to have the aid and support of the Indian government since small operations cannot compete in the market place.

The American way of economic development in terms of agriculture and ranching on the reservations is a questionable proposition. Programs for agricultural development in underdeveloped countries of the Third World have been linked with the development of cooperatives organized and subsidized by the indigenous government. In contrast, the United States government agencies have emphasized two related choices: introduction of expensive machinery and commercialization of Indian lands or the breaking up of the traditional agricultural and pastoral economies, establishing wage labor, often relocating the formerly self-subsistent producers.

Cooperative self-help in agriculture, irrigation, building roads, and many other projects may be possible even without major investments in machinery and without wage labor from outside industry, but rather through cooperative sharing of profits generated from production and redistributed by Indian governments in services and payments. Besides financial aid and coordination, Indian governments could provide relevant education, information and instruction in techniques and methods of agriculture, breeding stock, human and animal health services, and other needed skills. Depending solely on college-educated professionals to solve the problems of underdevelopment is not the answer.

Politically, the rights of Indian governments and peoples and self-determination are essential for reservation economic development. For development programs to succeed, United States trust responsibility will have to be honored in terms of legal and human rights of Indian people, rather than the present ward-guardian colonialistic pattern. [illegible] attention to the responsibility of the United States and all American institutions [illegible] legislation reaffirming Indian treaties and agreements, aboriginal rights, and human rights

is necessary. Leadership from the executive branch is especially necessary. Indian governments and organizations should carry on an intense national and international campaign to embarrass and humiliate the United States for allowing the economic and social conditions of Indian people to continue. The terror of backlash, probably its purpose to begin with, has quieted Indian protest. This silence is the most dangerous situation possible. The political struggle with the United States government and with the states for cooperation and protection and respect for Indian rights, is inseparable from and is an integral part of the internal economic development of Indian reservations.

The liquidation of underdevelopment within the reservation economies will be a very complex task necessitating complex planning. Economic viability cannot be attained without the transformation of the distorted economic structure. Better returns on mineral extraction, taxation, and investments in Indian government-owned and operated enterprises will play a key role in this transformation. The fundamental goal of Indian governments must be to remove from the key positions of the economy the monopolistic position of outside interests and to put restrictions on their exploitative activities. Indian governments and planners are well aware that this is no simple task. The use of Indian government intervention to break the power of outside pressure is necessary. An example of successful intervention is the Navajo government intervention in support of Navajo workers in the Navajo power near Page, Arizona in 1971, paving the way for the [illegible]

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NATIVE AMERICAN STUDIES
UNIVERSITY OF NEW MEXICO

Roxanne Dunbar Ortiz, Coordinator
Larry Emerson, Assistant Coordinator

Established in 1970 by the University of New Mexico, Native American Studies grew out of pressure by Native American communities in New Mexico for the University to serve the higher education needs of the sizable Native American population. The existence of Native American Studies has profoundly affected the University as well as Native American communities in New Mexico. Native American Studies is one of the factors which has brought about an increase in Native American student population at the University from fewer than 100 in 1970 to over 600 in 1979.

Native American Studies at the University of New Mexico began as a student service program and has become an increasingly academic program, concentrating mainly on curriculum development.

With this volume, Native American Studies begins its publication program with plans to produce several scholarly books and occasional papers each year. Publications will be regional, national and international in scope, emphasizing retention, expansion, control, and development of the land bases and cultures of Native American communities. Publications will be in three series: The History Series ; the Literature Series; and the Development Series, of which this volume is the first.

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ISBN 0-934090-00-9